

In the Matter of:)
)
Application for Certification) Docket No.
for the Metcalf Energy Center) 99-AFC-3
[Calpine Corporation and)
Bechtel Enterprises, Inc.])

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

William J. Keese, Chairman, Associate Member

Mike Smith, Commissioner Advisor

Stan Valkosky, Hearing Officer

STAFF PRESENT

Paul Richins, Project Manager

Kerry Willis, Staff Counsel

Dick Ratliff

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Christopher Ellison

Jeffrey Harris

Ellison, Schneider & Harris LLP

Kenneth Abreu, Calpine

Steven De Young, Metcalf Energy Center

INTERVENORS

Dian Grueneich, for CVRP

David Marcus, CVRP

Roger Beers, CVRP

Helene Leckman Leichter, City of Morgan Hill

Laurel Prevetti, City of San Jose

Scott Scholz

Isa Ajlouny

Jeff Wade

INTERVENORS (continued)

John Wiktorowicz, Rancho Santa Teresa
Swim and Racquet Club

Mike Murphy

Elizabeth Cord, STCAG

Robert Williams

Mike Boyd, CARE

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Good evening,
3 and welcome to the Prehearing Conference for the
4 Metcalf Energy Center. My name is Robert Laurie,
5 Commissioner with the California Energy
6 Commission, and Presiding Member of the
7 Commission's Committee hearing this case.

8 The gentleman to the left of the
9 gentleman that I'm sitting next to is my colleague
10 on the Commission, Commissioner Bill Keese, who is
11 Chairman of the Commission.

12 To my immediate left is Stan Valkosky.
13 Mr. Valkosky is the Hearing Officer for this case.
14 Mr. Valkosky will administer these proceedings.

15 To Chairman Keese's left is Mr. Mike
16 Smith, the Chairman's Senior Advisor.

17 The purpose of today's hearing is to
18 have a thorough discussion of the process and
19 procedures to be utilized during the Evidentiary
20 Hearing. Our Evidentiary Hearings are a
21 combination of strict formalities and, in some
22 cases, a little less so. But it's very important
23 that we here tonight reach a thorough
24 understanding as to that process.

25 At this time I'd like to ask my

1 colleague, Chairman Keese, if you have any opening
2 comments.

3 CHAIRMAN KEESE: No, not at this time.

4 PRESIDING MEMBER LAURIE: Thank you, Mr.
5 Chairman.

6 Mr. Valkosky.

7 HEARING OFFICER VALKOSKY: Thank you,
8 Commissioner.

9 At this time I'd like the parties to
10 introduce themselves.

11 Applicant.

12 MR. DeYOUNG: Steve DeYoung, Calpine
13 Bechtel.

14 MR. ABREU: Ken Abreu, Calpine Bechtel.

15 MR. HARRIS: Jeff Harris, outside
16 counsel to Calpine Bechtel.

17 MR. ELLISON: Chris Ellison, also
18 outside counsel to Calpine Bechtel.

19 MS. LEICHTER: Helene Leichter, City
20 Attorney, City of Morgan Hill.

21 MR. SCHOLZ: Scott Scholz, local
22 resident, Intervenor.

23 MR. AJLOUNY: Isa Ajlouny, Intervenor.

24 MR. BEERS: Roger Beers, outside counsel
25 for CVRP, Intervenor.

1 MS. GRUENEICH: Dian Grueneich, outside
2 counsel for CVRP.

3 MR. MARCUS: David Marcus, consultant to
4 CVRP.

5 MR. RICHINS: Paul Richins, Project
6 Manager for the California Energy Commission.

7 MS. WILLIS: Kerry Willis, I'm Staff
8 Counsel, and I represent the Staff in these
9 proceedings.

10 MR. RATLIFF: Dick Ratliff, Staff
11 Counsel, for the CEC Staff.

12 HEARING OFFICER VALKOSKY: Excuse me.
13 Mr. Scholz, are you representing the Santa Teresa
14 Citizens Action Group?

15 MR. SCHOLZ: No, I'm not.

16 HEARING OFFICER VALKOSKY: You're not.
17 You're here as an individual. Okay.

18 Are there any representatives from
19 either the Santa Teresa Citizens Action Group or
20 Rancho Santa Teresa Swim and Racquet Club, or the
21 Californians for Renewable Energy, or Southern
22 Energy here present?

23 I see that there are none.

24 Before we begin with today's agenda, I'm
25 honored to announce that the Mayor of San Jose has

1 graced us with his presence, and I understand he
2 has some remarks.

3 Sir.

4 MAYOR GONZALES: Thank you very much.

5 I appreciate you giving me the
6 opportunity just to take a minute here to welcome
7 this process to the City of San Jose. This is
8 obviously the first step in a process that I
9 understand to be very deliberate, and lengthy, and
10 comprehensive. And I just urge that you do
11 everything you possibly can to give this a fair
12 hearing in our city. This is a very important
13 issue to the people of San Jose, and to the people
14 of Silicon Valley.

15 As you may know, this past Tuesday
16 evening this issue was engaged by our Council and
17 debated by our Council, and this -- and in a
18 unanimous vote, we took a position of opposition
19 to this project. And among our key concerns that
20 we'll be able to address you later in the process
21 certainly is land use compatibility, environmental
22 issues, health, and air quality issues.

23 Let me just say, on behalf of the City,
24 that our entire staff stands ready to assist you
25 in this process, and assist you in setting up

1 meeting space, and logistics that sometimes are
2 difficult to accommodate. We certainly -- we're
3 more than willing to help you in that regard,
4 because this is, as I said, a very critical issue
5 to our community.

6 I personally look forward to
7 participating in your Evidentiary Hearings in
8 January, and any other part of the process to
9 follow.

10 So, welcome to San Jose. I hope that
11 you enjoy this meeting and future meetings in our
12 community.

13 Thank you.

14 PRESIDING MEMBER LAURIE: Thank you very
15 much.

16 HEARING OFFICER VALKOSKY: Thank you,
17 sir.

18 I've noticed we have at least one more
19 Intervenor present. I'm sorry, two more
20 Intervenors. Is there -- is it possible that we
21 can -- okay. We'll go off the record for a
22 second.

23 (Off the record.)

24 HEARING OFFICER VALKOSKY: Mr. Wade,
25 would you introduce -- we've done the Intervenor

1 introductions. I'd like to complete them.

2 MR. WADE: Thank you. I'm sorry, I'm a
3 couple of minutes late. My name is Jeff Wade, and
4 I'm an Intervenor representing myself, and also a
5 member of the Santa Teresa Citizens Action Group.

6 HEARING OFFICER VALKOSKY: Okay.

7 Sir.

8 MR. WIKTOROWICZ: Yeah. My name is John
9 Wiktorowicz, and I'm an Intervenor representing
10 the Rancho Santa Teresa Swim and Racquet Club.

11 MR. MURPHY: My name's Mike Murphy, I'm
12 an Intervenor.

13 HEARING OFFICER VALKOSKY: Okay, thank
14 you.

15 The other person I'd like to call to
16 everyone's attention is Ms. Roberta Mendonca, our
17 Public Adviser. She is available to assist any
18 members of the public in participating at this
19 process.

20 Okay. By way of background, the
21 Committee scheduled tonight's Prehearing
22 Conference in a notice dated October 23rd, 2000,
23 and explained in that notice the basic purposes of
24 the Prehearing Conference are to assess the
25 parties' readiness for hearings, clarify areas of

1 agreement or dispute, to identify witnesses and
2 exhibits, to determine upon which areas parties
3 desire to cross examine witnesses from other
4 parties, and to discuss associated procedural
5 items.

6 To achieve these purposes, we required
7 in the notice that any party desiring to
8 participate in tonight's conference, or to present
9 evidence or to cross examine witnesses at future
10 Evidentiary Hearings, file a Prehearing Conference
11 Statement by last Tuesday, November 21st, 2000.

12 Timely Prehearing Conference Statements
13 were filed by the following parties: the
14 Applicant; the Staff; CVRP; City of San Jose;
15 Santa Teresa Citizens Action Group, by Jeff Wade;
16 City of Morgan Hill; Rancho Santa Teresa Swim and
17 Racquet Club; Isa Ajlouny; and the California --
18 Californians for Renewable Energy.

19 Mr. Robert Williams, who is a Intervenor
20 in these proceedings, also filed a petition and
21 motion. The petition for an order lengthening
22 time was denied by the Committee in a ruling dated
23 November 27th. The Committee has also calendared
24 his motion for a new Committee for consideration
25 by the full Commission at its regular Business

1 Meeting on December 6th in Sacramento.

2 In addition, we understand that CARE's
3 two recent requests for information under the
4 Public Records Act are being processed by the
5 Office of the Chief Counsel, pursuant to our
6 regulations.

7 Yesterday, we also received a petition
8 to intervene from Southern Energy. Southern's
9 stated interests are air quality; environmental
10 justice -- the environmental justice aspects of
11 socioeconomics; reliability of gas supply; and
12 transmission.

13 Mr. Ellison, are there any objections by
14 Applicant to granting this petition?

15 MR. ELLISON: No, there are not.

16 HEARING OFFICER VALKOSKY: Thank you.

17 As stated in the notice, we will first
18 discuss items pertinent to the Prehearing
19 Conference. Following that discussion, and as
20 time allows, we will then provide an opportunity
21 for public comment, first on the items discussed
22 tonight, and second, on more general matters.

23 At the outset I would like to note that
24 the Committee is aware of the City Council's
25 action, as the Mayor summed up, on this past

1 Tuesday, and that that action has probably given
2 rise to the expectation that we terminate these
3 proceedings.

4 Under our statute and regulations,
5 however, the Applicant is entitled to a decision
6 on the merits of its project, unless it chooses to
7 withdraw or fails to proceed with due diligence.
8 Absent these or other highly unusual
9 circumstances, the Commission has little choice
10 other than to proceed.

11 At this time, I'd like to ask the
12 Applicant whether it intends to proceed with the
13 project, withdraw, seek a suspension, or any other
14 action.

15 MR. ABREU: Mr. Valkosky, while we were
16 disappointed in the vote of the City Council
17 earlier this week, it's our intent to proceed with
18 the CEC State process for the licensing of Metcalf
19 Energy Center.

20 HEARING OFFICER VALKOSKY: Thank you,
21 Mr. Abreu.

22 I notice Mr. Boyd came in. Mr. Boyd --
23 off the record again, please.

24 (Off the record.)

25 HEARING OFFICER VALKOSKY: Okay. Back

1 on the record.

2 Okay, we have two more parties who have
3 just arrived. Ms. Prevetti.

4 MS. PREVETTI: Thank you. I'm Laurel
5 Prevetti, with the City of San Jose Planning
6 Department.

7 HEARING OFFICER VALKOSKY: And, Mr.
8 Boyd.

9 MR. BOYD: I'm Mike Boyd, the president
10 of Californians for Renewable Energy, CARE.

11 HEARING OFFICER VALKOSKY: Fine. Thank
12 you.

13 In order to facilitate tonight's
14 discussion, the Committee has prepared three draft
15 working papers entitled Group 1, Group 2, and
16 Group 3. If you don't have a copy of these, I
17 really would suggest you get a copy. There are
18 copies available on the table back there, or I
19 have extra copies here. It will guide our
20 discussion.

21 Okay. Does everyone have copies,
22 especially the parties? Okay.

23 Basically, what this represents is a
24 distillation of the material, at least my
25 interpretation of the material that was contained

1 in the nine or ten Prehearing Conference
2 Statements we received.

3 The way I intend to proceed is by topic
4 area, starting with Group I, and just going down
5 the list. Then going to Group II, then going to
6 Group III. There are certain questions I have.
7 I'm sure there are questions I missed that the
8 parties will have. We'll give everybody a chance
9 to discuss it.

10 There are also dates that are appearing
11 on these documents. I'd like to emphasize to
12 everyone that the grouping of the topics and the
13 dates reflected are only tentative, at this time.
14 Part of what we're here to do tonight is to try to
15 establish dates for testimony and for hearings on
16 the topics that are reasonable and will hopefully
17 work for at least the majority of the parties.

18 With that said, basically the Group I
19 topics would be heard in about two weeks, on
20 December 13th or 14th. Prepared testimony and
21 exhibits pertinent to these topics would be due
22 December 7th. All these are topics on which there
23 appears to be a relatively limited degree of
24 interest and/or controversy, relatively limited
25 being the operative words.

1 The way that filing of testimony works
2 in our proceedings is that if you're proposing to
3 sponsor a witness, you then have to file copies of
4 that witness's prepared testimony and exhibits.
5 And when I say exhibits, I'm referring to any
6 other documentary materials on which you wish to
7 rely, except for the AFC document, because I think
8 everyone has that and the Staff Assessment
9 document. That's been very widely circulated.

10 So Applicant would file testimony first.
11 After an interval of approximately seven to ten
12 days, Staff and the other Intervenors would file
13 their own testimony after they have reviewed
14 Applicant's testimony. A week or so after that,
15 Applicant has the opportunity to file rebuttal
16 testimony.

17 All of these filings would be done,
18 hopefully, at least a week before we would hear a
19 certain topic. So really what we're looking at,
20 the Group I topics are the only ones, at least in
21 the Committee's opinion, that appear susceptible
22 for hearing in December. Groups II and III would
23 likely commence -- and again, I realize these are
24 approximate dates -- about mid-January, and extend
25 through late January, and possibly into early

1 February.

2 Okay. Are there any questions on the
3 general outline? Just one second.

4 Yes, sir.

5 MR. AJLOUNY: Yes. I -- I first want to
6 object to the time schedule, in a sense, and I
7 don't know if this is appropriate now. It is my
8 first stab at this whole process. But I am yet to
9 see the Prehearing Statement from the Staff. And
10 I just heard today that it came out from the
11 gentleman next to me, Scott, which surprised me,
12 and he made a comment that he -- and I don't, you
13 know, not to put Scott on the spot, but something
14 about the hearings are not going to even be in the
15 City of San Jose. I don't even know if that's
16 true, because I haven't seen it yet.

17 As an Intervenor, I was very concerned
18 of not receiving everything. I e-mailed Mr. Paul
19 Richins, and I have copies of the e-mail, of my
20 concern.

21 HEARING OFFICER VALKOSKY: Okay. Just
22 one second, please.

23 First of all, the hearings, I don't
24 know, that's just a rumor. They haven't been
25 scheduled yet.

1 MR. AJLOUNY: No -- what did I say?

2 HEARING OFFICER VALKOSKY: You said the
3 hearings would not be held in the City of San
4 Jose. You said that was one of the rumors you
5 heard.

6 MR. AJLOUNY: I thought that was in the

7 --

8 HEARING OFFICER VALKOSKY: Those
9 hearings have not yet been scheduled.

10 MR. AJLOUNY: Okay.

11 HEARING OFFICER VALKOSKY: Okay? So --

12 MR. AJLOUNY: In the Prehearing
13 Statement, did it say something like that?

14 HEARING OFFICER VALKOSKY: I have no
15 idea. The Staff Prehearing Conference Statement

16 --

17 MR. AJLOUNY: That's what I'm talking
18 about.

19 HEARING OFFICER VALKOSKY: -- was filed
20 on November 21st.

21 MR. AJLOUNY: Okay.

22 HEARING OFFICER VALKOSKY: I have --

23 MR. AJLOUNY: Well, I didn't receive it.
24 I'm just letting you know, as an Intervenor --

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. AJLOUNY: I -- I didn't receive it.

2 So --

3 HEARING OFFICER VALKOSKY: Appreciate
4 it. Okay.

5 MR. AJLOUNY: -- and so I, you know, I
6 raised the concern to -- to Paul. I think it was
7 on the 15th. He responded and said to talk to
8 you, which I was told I'm not supposed to talk to
9 you, because as an Intervenor --

10 HEARING OFFICER VALKOSKY: No, I try to
11 -- we have an ex parte rule.

12 MR. AJLOUNY: No, no, that's fine. I'm
13 just trying to play by the rules. But he said by
14 copying you, you'd know this, so I thought it was
15 taken care of. And I didn't get the, you know,
16 any --

17 HEARING OFFICER VALKOSKY: Mr. Richins,
18 do you have any idea why he did not receive the
19 Prehearing Conference Statement?

20 MR. RICHINS: No. We docketed it, and
21 we served it on all the parties, as far as I know.
22 So I have -- and so I don't know why --

23 HEARING OFFICER VALKOSKY: Do you have
24 an extra copy with you that you could provide him?

25 MR. RICHINS: I have a copy, I think,

1 that I could provide. I don't have an extra, but
2 he can have mine.

3 MR. AJLOUNY: Is it e-mailed, or is it
4 hard copy mailed?

5 MS. WILLIS: It was both. We
6 electronically --

7 HEARING OFFICER VALKOSKY: I would like
8 -- I would like to remind the speakers, because we
9 have multiple parties using the same mic, that
10 when you speak into the mic, please first identify
11 yourself for the purposes of the record.

12 MS. WILLIS: This is Kerry Willis, Staff
13 Counsel.

14 It was both electronically served and a
15 hard copy. But you know what, Isa, I'd better
16 check to make sure, since you were a latecomer to
17 our Intervenor process, that you are actually on
18 our list, on our electronic service list. So I
19 will double-check on that when I get back. I
20 apologize if you're not. But you should've
21 received a hard copy.

22 MR. AJLOUNY: Well, just -- this is Isa,
23 for the record. A Wilma Lee sent out to
24 everybody, except me, an e-mail about a Metcalf
25 opinion document and the San Jose Mayor letter,

1 and that was somewhere before the beginning --
2 before the 14th of November. That's when I
3 immediately e-mailed Paul Richins, the Project
4 Manager, which I thought I was doing the right
5 thing, and his response is don't talk to me, talk
6 to you, Stan.

7 And he did put in the e-mail thanks for
8 the info, this is a quote from Mr. Paul Richins,
9 thanks for the info. You should contact Stan on
10 this matter. And by the fact that I have cc'd
11 Stan with this message, he is now aware of the
12 situation. And so forth. I don't --

13 HEARING OFFICER VALKOSKY: I don't know.
14 I don't serve Staff documents.

15 MR. AJLOUNY: Okay. Well, I --

16 HEARING OFFICER VALKOSKY: We don't --

17 MR. AJLOUNY: -- I guess the point I
18 want to make, and I really, really want to make it
19 clear, is I don't know, either. I'm new at this.
20 I'm trying to go by the rules. And I just feel
21 that this is such a -- a big rush thing, and I
22 mentioned to you just before the meeting, it's
23 being rushed through, and we have so much going on
24 in this project as far as the City Council had
25 meetings, they wanted facts, we had a lot of work

1 to do. And not having this document I feel has
2 hurt my -- my personal public participation in
3 this whole process.

4 And I -- I really want that on the
5 record, that I am not on that list. And -- and,
6 as well, I'm assuming Wilma Lee is from the CEC.
7 Okay. So here's a list of all their e-mail that,
8 again, went to Paul Richins, and then I just found
9 out this afternoon that the Prehearing -- I -- I
10 didn't realize they'd come out with one, or what
11 goes on. You know, I'm just learning.

12 So there's some information, I'm sure,
13 in that Prehearing Statement that -- knowing what
14 witnesses and stuff, because I would've -- I
15 would've written some motions of -- of some issues
16 that I see on your Group I here.

17 But anyways, I'll just --

18 HEARING OFFICER VALKOSKY: Okay. Well,
19 we -- we will be going over these topics. You
20 will have an opportunity to comment at that time.

21 Mr. Boyd, did you have any comments?

22 MR. BOYD: Mike Boyd, CARE.

23 Basically, my comment is I'm just
24 looking at what you filled in there, and you put
25 CARE, a bunch of question marks next to it.

1 My concern is that I don't want you to
2 interpret that we've in any way waived our right
3 to cross examine on any of these topics. And I --
4 and I really don't want to waive our right to
5 provide witnesses. I feel like the Commission has
6 a duty to provide certain information, and that as
7 a member of the public and an Intervenor, we have
8 a right to provide alternative evidence if we so
9 choose to do so.

10 I don't feel like I have a duty, though,
11 to have to identify each and every topic that
12 we're going to cross examine or present witnesses
13 on.

14 HEARING OFFICER VALKOSKY: You -- Mr.
15 Boyd, I guess we have a disagreement, then,
16 because under our procedures, if you are going to
17 sponsor a witness -- and you have an absolute
18 right to sponsor an independent witness, there is
19 no question about that -- but in order to -- in
20 view of the reality of scheduling situations, the
21 availability of other parties and things like
22 that, we must know tonight, as was specified in
23 the Prehearing Conference notice, whether or not
24 you intend to sponsor a witness, how long that
25 direct testimony will take, and whether or not you

1 intend to cross examine a witness from another
2 party.

3 That is simple due process for everyone
4 involved. That is the way the system works. We
5 will go through these topics, topic by topic,
6 tonight.

7 MR. BOYD: Well --

8 HEARING OFFICER VALKOSKY: You can
9 indicate if you want to cross examine or not. If
10 you don't, and no one else does, there may not be
11 a witness there for you to cross examine. That's
12 what it comes down to.

13 MR. BOYD: Well, I'm not waiving any of
14 my CEQA rights, is what I'm trying to tell you.
15 And I believe under my CEQA rights, I do have an
16 opportunity to raise issues and evidence until the
17 decision is made. And that's my interpretation of
18 CEQA. And -- and I believe CEQA supersedes the
19 Warren-Alquist Act in this matter.

20 HEARING OFFICER VALKOSKY: Sir, you are
21 entitled to your opinion.

22 MR. BOYD: So for the record, I would
23 like you to reflect that -- just be consistent,
24 put CARE question mark on all of them.

25 HEARING OFFICER VALKOSKY: Well, we will

1 -- we will go through the topics. Now, starting

2 --

3 MR. BOYD: I'm not going to -- to be
4 honest with you, I feel like you're already
5 wasting my time and taxpayers' times by continuing
6 this process. From my -- from my position, I
7 would like to see all of these issues dealt at
8 summarily right now, and get it over with so we
9 can go to court. Because that appears like that's
10 the intent of the Commission, if you're going to
11 override the City of San Jose.

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. BOYD: So, I mean, clearly, the fact
14 that you're continuing to proceed despite the
15 city's position, when there's overwhelming public
16 opposition to this, including the city, which is
17 the local agency, to me it shows that public
18 participation is non-existent.

19 PRESIDING MEMBER LAURIE: Your --

20 MR. BOYD: What happens --

21 PRESIDING MEMBER LAURIE: -- Mr. Boyd,
22 your comments are noted.

23 Mr. Valkosky, move on, please.

24 HEARING OFFICER VALKOSKY: Thank you.

25 Okay. Starting with the topic of

1 Project Description. Applicant had identified a
2 witness, Mr. Abreu, and I would note that the
3 Committee would expect Mr. Richins to also testify
4 on behalf of Staff, at least to the extent that
5 the project as proposed by the Applicant was, in
6 fact, the one reviewed by Staff.

7 Does any other party propose to offer a
8 witness on the topic of Project Description?

9 Mr. Williams. Would you identify
10 yourself for the record, sir.

11 MR. WILLIAMS: Yes, thank you. I
12 apologize for arriving late. I thought the
13 meeting started at 6:30. I do apologize.

14 I have submitted the amendment I
15 promised to my Prehearing Statement. I've
16 distributed it by hand, and I indicated I would
17 cross examine the witnesses with respect to
18 Project Description in that handout.

19 To summarize my point, I believe the PSA
20 is too vague with respect to the description of
21 the project, because virtually every submittal
22 provided has been referenced. As you are well
23 aware, I have challenged the makeup of the Siting
24 Committee, and I think if you contemplate the need
25 to brief a new Siting Committee regarding relevant

1 documents, then you will start to see the reason
2 that I intend to cross examine at some length
3 precisely what the Project Description is.

4 HEARING OFFICER VALKOSKY: Sir, when you
5 say at some length, do you intend to cross examine
6 the witnesses from the Applicant, the Staff, or
7 both?

8 MR. WILLIAMS: Well, the Staff, from the
9 perspective of what material did they rely on, and
10 the Applicant, from the perspective of which
11 material is germane and supersedes previous
12 submittals.

13 HEARING OFFICER VALKOSKY: How long do
14 you estimate your cross examination will take, in
15 total?

16 MR. WILLIAMS: Well, it depends on the
17 amount of work that the Staff would -- if the
18 Staff would go through the existing PSA and
19 highlight the relevant documents by blocking them
20 in black ink, or something, you know, a box around
21 them, so that we know that these are the relevant
22 documents, it could be very brief. I would be
23 willing to stipulate to such a submittal.

24 But otherwise, if we have to go through
25 each document in the PSA references -- excuse me,

1 the FSA references, it could be quite time
2 consuming.

3 HEARING OFFICER VALKOSKY: Sir, I'm
4 looking for a fix on the time.

5 MR. WILLIAMS: Four hours.

6 HEARING OFFICER VALKOSKY: Okay. Any
7 response by Staff?

8 MS. WILLIS: Kerry Willis, Staff
9 Counsel.

10 You have four hours on -- I'm a little
11 confused. Four hours to cross examine on Project
12 Description?

13 MR. WILLIAMS: Well, just as one example
14 --

15 MS. WILLIS: Maybe -- maybe before you
16 continue, we don't -- actually don't see this
17 listed on the -- on Table I. Is that part of this
18 table?

19 MR. WILLIAMS: In my recent submittal to
20 you.

21 MS. WILLIS: The one that you just
22 handed out.

23 HEARING OFFICER VALKOSKY: I think he's
24 referring to the submittal, which was untimely.

25 MR. WILLIAMS: Yeah. No, I -- I'm

1 referring to the --

2 HEARING OFFICER VALKOSKY: Mr. Williams,
3 you know, you -- you were required, you got the
4 notice sent out October 23rd. It clearly said
5 Prehearing Conference Statements were due on
6 November 21st. Today is November 30th.

7 MR. WILLIAMS: Yes.

8 HEARING OFFICER VALKOSKY: You know,
9 sir, every -- we have a roomful of people that are
10 trying to play by established rules. It will not
11 work if we have people that try to define their
12 own rules.

13 MR. WILLIAMS: Well, I -- I will try to
14 play by your rules, sir. I did make a good faith
15 effort to comply with this when my petition for
16 more time was denied. I will accept a reasonable
17 amount of time, perhaps one hour, to cross examine
18 witnesses. I would hope that you would have the
19 Staff in the meantime go through and indicate
20 which reference documents they rely upon in
21 reaching the conclusions in the FSA, and be very
22 brief. If you would do that.

23 MS. WILLIS: But you're -- you're asking
24 -- Kerry Willis, Staff Counsel. You're asking
25 under Project Description --

1 MR. WILLIAMS: Yes.

2 MS. WILLIS: -- or under -- because that
3 isn't -- I guess my question is, that's not listed
4 under -- even under this supplemental filing. I
5 think we would object -- we would object to any
6 cross examination on Project Description. At
7 least from the Staff's perspective.

8 MR. WILLIAMS: Well, forgive me. I
9 could bring it up under each and every topic.
10 Each chapter of the PSA -- excuse me, the FSA
11 needs to state which documents were relied upon in
12 reaching the conclusion that was reached. Because
13 essentially, all the documents in the docket are
14 now cited.

15 MS. WILLIS: The FSA does cite the
16 documents. There is a reference section at the
17 end of each -- each section of the -- each subject
18 area.

19 MR. WILLIAMS: Yes, but some of them
20 supersede other documents. I -- I would like to
21 cross examine, I would appreciate a reasonable
22 amount of time. I will try to be as brief as
23 possible.

24 PRESIDING MEMBER LAURIE: Mr. Valkosky,
25 the challenge I have is when Staff prepares their

1 FSA they rely on chapter by chapter inputs. The
2 Staff members who know which documents were relied
3 upon were the Staff members that prepared those
4 individual chapters, so that --

5 HEARING OFFICER VALKOSKY: But I believe
6 Mr. Richins prepared the chapter on Project
7 Description. And that's --

8 PRESIDING MEMBER LAURIE: Okay. But I
9 think what Mr. Williams is asking for is cross
10 examination on the documents relating to all
11 chapters. Do I understand you correctly?

12 MR. WILLIAMS: You did understand that
13 comment, as well. In my view, the project is
14 poorly described. You can't say easily from the
15 documents at hand what -- what is planned, and
16 you cannot further tell in the PSA what -- the
17 FSA, what documents were relied upon.

18 PRESIDING MEMBER LAURIE: Mr. Valkosky,
19 I don't know how you -- first of all, I question
20 the nexus between a project description and
21 technical documentation that goes to evidence on
22 each individual chapter.

23 I also question Mr. Richins' ability to
24 testify as to -- although he's the overall Project
25 Manager, and could, if he has personal knowledge,

1 but I think what Mr. Williams really wants is to
2 question the folks who were responsible for the
3 preparation of those individual chapters.

4 MR. WILLIAMS: I'd be happy to deal with
5 it that way, if that --

6 PRESIDING MEMBER LAURIE: What's your
7 preference, Mr. Valkosky?

8 MR. WILLIAMS: -- is more concise.

9 HEARING OFFICER VALKOSKY: We can just
10 take that under consideration at this time.

11 Any other party intend to cross
12 examination -- cross examine on the topic of
13 Project Description?

14 MS. GRUENEICH: Mr. Valkosky, just to
15 clarify. Dian Grueneich, for CVRP.

16 As I understand it -- or maybe this is a
17 question. In looking at the Applicant presenting
18 30 minutes of direct testimony, my understanding
19 is that the basic rule for the hearings is no
20 surprises, so that we will not be in a position of
21 the Applicant, either in the testimony being filed
22 next week or at the hearing, giving any changes to
23 the project under this topic.

24 I wanted to clarify that we have not
25 requested any time to cross examine, because we

1 understand that what is going in under this topic
2 is what has been submitted.

3 HEARING OFFICER VALKOSKY: Understood --
4 is the Applicant intending to submit any new or
5 additional information on the topic of Project
6 Description?

7 MR. ABREU: No, we're not. In fact, we
8 wouldn't even need 30 minutes for our direct
9 testimony. I think you could set it at 15.

10 HEARING OFFICER VALKOSKY: Okay. Thank
11 you.

12 With that, does that satisfy your
13 question, Ms. Grueneich?

14 MS. GRUENEICH: Yes, we have no cross
15 examination.

16 HEARING OFFICER VALKOSKY: Okay. Mr.
17 Boyd.

18 MR. BOYD: I don't have a problem.

19 HEARING OFFICER VALKOSKY: Pardon me,
20 sir?

21 MR. BOYD: I don't have a problem.

22 HEARING OFFICER VALKOSKY: Thank you.

23 MR. BOYD: What -- what are you asking
24 me if I have a problem with?

25 HEARING OFFICER VALKOSKY: I'm asking

1 you if you intend to cross examine on the topic of
2 Project Description.

3 MR. BOYD: I would like to reserve my
4 right to do that, yes.

5 HEARING OFFICER VALKOSKY: Well, no.
6 You tell me now if you want to do it, sir.

7 MR. BOYD: Yes.

8 HEARING OFFICER VALKOSKY: How long do
9 you want?

10 MR. BOYD: He needs 15, I need five.

11 HEARING OFFICER VALKOSKY: Five minutes
12 to cross examine? Fine. Thank you.

13 Next topic, compliance and General
14 Conditions. And on this topic, I would -- Staff
15 has a witness proposed. I would also like to
16 indicate to Applicant that I would like a witness
17 from Applicant indicating their understanding and
18 agreement to the Compliance and General
19 Conditions.

20 Is there any question on that?

21 MR. ABREU: No.

22 HEARING OFFICER VALKOSKY: Okay.

23 On the matter of Compliance and General
24 Conditions, is there any party that intends to
25 cross examine on that?

1 PRESIDING MEMBER LAURIE: Mr. Valkosky,
2 let me ask. I want to make sure that the
3 Intervenors understand that this is, at least my
4 understanding is, it's a generalized discussion,
5 and by not cross examining on this issue one is
6 not waiving any right of addressing individual
7 conditions as it may relate to any of the specific
8 --

9 HEARING OFFICER VALKOSKY: That is
10 correct. Yes. This is just our generalized
11 Compliance plan as has been laid out in the --
12 both the Preliminary and the second iteration of
13 the Staff Assessment. It's been public for a long
14 time.

15 Okay. Are there any Intervenors who
16 intend to cross examine on this topic?

17 Okay. Identify yourself for the record,
18 please?

19 MR. AJLOUNY: Isa --

20 HEARING OFFICER VALKOSKY: You have to
21 -- okay, Isa. Spell your last name, Isa.

22 MR. AJLOUNY: A-j-l-o-u-n-y. And the
23 first name is Isa, and the way to remember it is
24 like Lisa, without the L. That way everyone knows
25 Isa. Right? You like that, guys?

1 All right. Just to understand what Mr.
2 Laurie just mentioned. Does that mean we're kind
3 of getting a general idea how the hearings are
4 going to go, but if I think of something a few
5 days before, or I see something in the testimony
6 and I say boy, I want to ask a couple of
7 questions, I have the right on that day to say I'd
8 like to cross examine? Or if I don't say it now,
9 I lose my chance to cross examine?

10 HEARING OFFICER VALKOSKY: Okay. We
11 will, to the extent it is reasonable and relevant,
12 attempt to accommodate. Right now, I need to know
13 those people who intend to cross examine for sure.
14 For scheduling purposes.

15 MR. AJLOUNY: Okay. Good.

16 HEARING OFFICER VALKOSKY: That's what
17 it comes down to.

18 MR. AJLOUNY: Good. Okay. Great, thank
19 you.

20 HEARING OFFICER VALKOSKY: Anyone else
21 in Compliance? Mr. Boyd.

22 MR. BOYD: Yes. Yes, I'd like to
23 participate, and I anticipate -- I put down, I
24 figured about 20 minutes, depending on -- it could
25 be as much as 20 minutes, I'm thinking.

1 HEARING OFFICER VALKOSKY: And what --
2 what particular items in Compliance would you
3 intend to cross examine on? Or what particular
4 areas --

5 MR. BOYD: Relating to air -- air
6 impacts in Public Health.

7 HEARING OFFICER VALKOSKY: Okay.
8 Understand -- understand, we're not talking about
9 the specific Air Quality conditions.

10 MR. BOYD: No, no. We're talking about
11 the General Compliance issues, like the Bay Area
12 Air Quality Management District regulations, that
13 kind of thing? Is that what you mean?

14 HEARING OFFICER VALKOSKY: No. No,
15 we're talking -- we're talking about the general
16 procedures that the Commission uses to interpret
17 the Conditions of Certification, to informally
18 resolve disputes, should a dispute over the
19 interpretation of a Condition of Certification
20 occur, and formal mechanisms that are available.
21 This is what's referred to in the Staff Assessment
22 as the Compliance Plan or Compliance and General
23 Conditions.

24 MR. BOYD: So, for example, if I wanted
25 to raise an issue with a compliance issue on

1 another case that Calpine had, like, say, Sutter,
2 for example --

3 HEARING OFFICER VALKOSKY: This would
4 not be the place to do it.

5 MR. BOYD: -- I couldn't present
6 evidence -- for example, I made a public records
7 request for information about any compliance
8 problems the Applicant may have had in any of its
9 other projects before the CEC. I haven't received
10 the response, but it's coming in the mail.

11 Now, if I get that, am I still able to
12 put that in evidence and then ask questions under
13 the General Conditions and Compliance on that?

14 HEARING OFFICER VALKOSKY: I don't know
15 --

16 MR. BOYD: Where does that fit in, then?

17 HEARING OFFICER VALKOSKY: That's a good
18 question, and I don't have a ready answer for it,
19 frankly.

20 MR. BOYD: Because, you know, that's --
21 that's a considerable issue in CEQA, as I
22 understand it, is their record.

23 HEARING OFFICER VALKOSKY: No. What --
24 as I say, if you could just focus on the
25 Compliance Plan as I have just described. Mr.

1 Richins, is that a -- is that an adequate
2 description of it?

3 MR. RICHINS: Yes, sir.

4 HEARING OFFICER VALKOSKY: Okay. These
5 are our general procedures, the procedures that
6 Staff will follow should an issue over the
7 applicability or the enforcement or the
8 Applicant's compliance with a Condition of
9 Certification occur. That's essentially what it
10 is.

11 MR. BOYD: Well, you said general.

12 HEARING OFFICER VALKOSKY: Well, yes, it
13 is. It is -- it is the general provisions --

14 MR. BOYD: It -- is what I'm saying, is
15 --

16 HEARING OFFICER VALKOSKY: Okay. Mr. --

17 MR. BOYD: -- I reserve my right --

18 HEARING OFFICER VALKOSKY: -- Mr. Boyd,
19 I'll schedule you in for 15 minutes, and
20 apparently we'll have to have a Staff witness on
21 that.

22 MR. BOYD: Can -- can I also, before you
23 go on, I would like to say that I -- I can't stay
24 for this whole meeting, and so what I'm going to
25 do is I'm going to fill out this form you gave me

1 and put in, to the best estimate, my time. And if
2 there's a witness, put their name down, if that's
3 okay with you. And then you can consider that.

4 HEARING OFFICER VALKOSKY: If you're
5 going to put a witness down -- okay. Realize a
6 couple of things.

7 One, also put an estimate of the time
8 that witness will be required -- or you will
9 require to have that witness testify. And also
10 realize that if you are going to offer a witness
11 of your own, at some point you will have to file
12 prepared testimony of that witness.

13 MR. BOYD: That's fine.

14 HEARING OFFICER VALKOSKY: So that the
15 other parties know what's happening.

16 MR. BOYD: That's fine.

17 HEARING OFFICER VALKOSKY: Okay?

18 MR. BOYD: Okay. Thank you.

19 HEARING OFFICER VALKOSKY: And also
20 indicate the areas on which you want to cross
21 examine, and an approximate time for those.
22 That's why I've got the question marks here.
23 Okay?

24 MR. BOYD: No problem.

25 HEARING OFFICER VALKOSKY: Is there

1 anything else on Compliance?

2 Mr. Williams.

3 MR. WILLIAMS: Yes. I will try to be
4 brief on this issue, but I would like to have
5 statements for the record as to the amount of time
6 and the -- the CEC's past practices with respect
7 to enforcing Conditions of Compliance. At one of
8 the workshops this was covered.

9 HEARING OFFICER VALKOSKY: Okay. That's
10 -- that's -- I think that's fine. And I think
11 Staff's witness can cover those materials.

12 MR. WILLIAMS: Thank you, sir.

13 HEARING OFFICER VALKOSKY: You bet.

14 Anything else on Compliance?

15 Mr. Wade.

16 MR. WADE: Jeff Wade. I'm just -- I
17 just want to clarify that there are issues of
18 compliance for each of the subcategories, and
19 there are verification methods identified for
20 those. Will we have an opportunity to question or
21 cross examine witnesses --

22 HEARING OFFICER VALKOSKY: You can --

23 MR. WADE: -- with regard to the
24 verification methodology as they come up, or --

25 HEARING OFFICER VALKOSKY: Okay. You're

1 talking about two things. On Compliance, what the
2 witness would be discussing is just verification
3 procedures in general. If you are talking about
4 the verification to a specific condition, for
5 example, a Socioeconomics or an Air Quality
6 condition, yes, you will have the opportunity in
7 the context of that hearing to question the
8 witness on that particular condition, that
9 particular verification, whatever is related to
10 that particular topic area.

11 MR. WADE: Okay. Thanks for that
12 clarification.

13 HEARING OFFICER VALKOSKY: Okay. That's
14 -- that's much more detailed than what we're
15 talking about at this point. Okay. But yeah,
16 that's -- that's certainly fair game.

17 MR. WADE: Then we have no need for
18 cross examination in that category.

19 HEARING OFFICER VALKOSKY: Okay.

20 Mr. Scholz.

21 MR. SCHOLZ: Scott Scholz. I'd like to
22 reserve at least five minutes, just to discuss
23 this. I didn't know this topic was going to come
24 up as a separate issue. Some stuff came up that I
25 raised at the workshop where the Compliance

1 Manager was at. And I'm not sure if I missed it
2 in the Final Staff Assessment, but I'm not sure if
3 what I raised is reflected in the Staff document,
4 and I would like to present some of that to the
5 Presiding Members --

6 HEARING OFFICER VALKOSKY: You would
7 like to present, or you would like to question the
8 witness?

9 MR. SCHOLZ: Well, what I was asking is
10 -- if you would like me to summarize quickly, or
11 --

12 HEARING OFFICER VALKOSKY: Quickly,
13 yeah. That would be --

14 MR. SCHOLZ: At the workshop I raised
15 that the Compliance Manager, it's in some cases
16 annual reports, some are, you know, twice a year
17 reports. Maybe some are monthly reports. If
18 something's going wrong at the plant, the local
19 community will not know for quite some time. And
20 I'd like for some sort of -- I'm not sure the
21 right term, ombudsman or some sort of community
22 representative who would be -- have access to that
23 data stream in a much more timely manner, so we
24 can kind of monitor ourself how --

25 HEARING OFFICER VALKOSKY: Okay. Okay.

1 There are -- there are two things I think, at
2 least, that I see in your question.

3 One, one which I think would be
4 appropriate for the -- the Compliance, as we refer
5 to it, the Compliance witness, and that would be
6 the -- the general verification procedures and
7 things.

8 But, two, if you have a specific
9 question that's related to a topic area, for
10 example, and it's only an example that comes to my
11 mind, Noise is -- is a topic where there is
12 typically a -- a public complaint form and things.
13 If you'd like to know more about that particular
14 topic area, I would prefer that you'd reserve that
15 until we got to that topic area.

16 But in general, from what you've said,
17 just the general verification procedures, yeah,
18 those would be appropriate under this topic.
19 Yeah. So you'd figure about five minutes. Okay.

20 MR. AJLOUNY: Isa. And I just want to
21 understand. I have some concerns about how the
22 process is working and -- and not being able to
23 participate as much as I'd like. And I don't want
24 to get into the details now, unless you want to.
25 But would that be under Compliance and General

1 Conditions? Can that be under --

2 HEARING OFFICER VALKOSKY: Are you
3 talking about -- what Compliance and General
4 Conditions refers to, as is stated in the Staff
5 Assessment, the mechanisms which the Energy
6 Commission's Compliance Staff uses to enforce and
7 ensure that an Applicant is complying with the --

8 MR. AJLOUNY: Okay.

9 HEARING OFFICER VALKOSKY: -- several
10 hundred Conditions of Certification that will be
11 imposed upon a successful project.

12 MR. AJLOUNY: Well, Mr. Valkosky, I
13 don't need to have any time there. But I was
14 prepared to come tonight to -- to state my
15 objection to some things in the process of what
16 we're going through here today. Will I have a
17 time to do that today? Because I have a major
18 concern about the time schedule.

19 HEARING OFFICER VALKOSKY: I'm --

20 MR. AJLOUNY: When do -- when does a
21 person like myself, as an Intervenor, when would
22 it be appropriate for me to talk about that?

23 HEARING OFFICER VALKOSKY: Okay. You
24 can talk about that if we have time after we're
25 done conducting the stuff we have to conduct

1 today. Okay? You can file a motion at any time.

2 MR. AJLOUNY: Okay. I -- all right.

3 HEARING OFFICER VALKOSKY: You know. I
4 mean, that's --

5 MR. AJLOUNY: Okay, never mind. That's
6 appropriate.

7 HEARING OFFICER VALKOSKY: Anyone else
8 on a Compliance issue?

9 Okay. Please identify yourself for the
10 record.

11 MR. MURPHY: I'm waiting for the mic.
12 Mike Murphy. This is not on Compliance. It goes
13 to --

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. MURPHY: -- what Isa was --

16 HEARING OFFICER VALKOSKY: Well, let's
17 -- let's -- I really have to get through these
18 topics.

19 MR. MURPHY: I have a question about the
20 process. You've already announced a projected
21 date, and I object strenuously to using Christmas
22 vacation time for scheduling any of this. We have
23 had the FSA review during, let's see, Halloween,
24 on the day before Halloween, when parents are
25 extremely busy. We had a week of workshops during

1 the last week of school, for the local school
2 districts here. And I feel that we need time to
3 participate fully.

4 I don't think those dates reflected
5 that. I would like to avoid Christmas vacation,
6 please?

7 HEARING OFFICER VALKOSKY: Okay. Thank
8 you for your comments.

9 Anything else? Okay. I'm moving off of
10 Compliance -- I'm sorry.

11 MS. WILLIS: Mr. Valkosky, Kerry Willis,
12 Staff Counsel. I just wanted to confirm Mr.
13 Scholz would be presenting ten minutes of
14 testimony?

15 HEARING OFFICER VALKOSKY: No. He will
16 be cross examining --

17 MS. WILLIS: Okay, five minutes of
18 cross.

19 HEARING OFFICER VALKOSKY: -- the Staff
20 witness, as I understood it, on Compliance, not
21 presenting testimony. Is that correct, Mr.
22 Scholz?

23 MR. SCHOLZ: To the extent that it's not
24 reflected in the Final Staff Assessment, the
25 proposal that I made for a community

1 representative to be aware of this -- how the
2 project is complying with what we all agree upon,
3 how the project should be working, to be able to
4 have access to that data stream in a more timely
5 manner.

6 HEARING OFFICER VALKOSKY: Okay. Well,
7 as I say, would I --

8 MR. SCHOLZ: Going beyond what the
9 Compliance Manager says he does for a typical
10 project.

11 HEARING OFFICER VALKOSKY: Okay. Well,
12 what I -- what I suggest is, first, that we
13 establish what it is the Compliance Project
14 Manager does, and go after that. Okay? We could
15 deal with Mr. Scholz' suggestion as that, as a
16 suggestion. The Compliance witness could address
17 the feasibility of it.

18 MS. WILLIS: That would be fine. Thank
19 you.

20 HEARING OFFICER VALKOSKY: Okay.
21 Geology and Paleontology.

22 Does Applicant have anything new in this
23 area?

24 MR. ABREU: Ken Abreu, Calpine Bechtel.
25 For witness Livingston we've got 30 minutes down

1 for direct. I can change that to 15 minutes. And
2 that is what's in our -- our statement.

3 HEARING OFFICER VALKOSKY: Okay. Staff
4 have anything new in this area, any new
5 information or analysis that it's going to submit?

6 MS. WILLIS: Not that I'm aware of.

7 HEARING OFFICER VALKOSKY: Okay.
8 Starting with Mr. Williams. Are there any of the
9 parties that want to cross examine on this area?

10 Mr. Williams.

11 MR. WILLIAMS: Thank you, sir. Not on
12 this one.

13 HEARING OFFICER VALKOSKY: City of
14 Morgan Hill?

15 MS. LEICHTER: No, sir.

16 HEARING OFFICER VALKOSKY: Mr. Wade.

17 Mr. Scholz.

18 MR. SCHOLZ: No, sir.

19 HEARING OFFICER VALKOSKY: CVRP, City?

20 Mr. Boyd.

21 MR. BOYD: We're on --

22 HEARING OFFICER VALKOSKY: We're on
23 Geology and Paleontology.

24 MR. BOYD: Ten minutes is what I put
25 down.

1 HEARING OFFICER VALKOSKY: Okay. What
2 particular area are you going to cross examine on?

3 MR. BOYD: I'm interested in the area of
4 Geological Hazards.

5 HEARING OFFICER VALKOSKY: Yeah, you've
6 got to speak into the microphone.

7 MR. BOYD: Oh, sorry. I'm interested in
8 the Geological Hazards issue, you know, earthquake
9 faults, that kind of thing.

10 HEARING OFFICER VALKOSKY: Okay, so ten
11 minutes of cross?

12 MR. BOYD: Yeah.

13 HEARING OFFICER VALKOSKY: Fine. Mr.
14 Murphy, anything?

15 MR. MURPHY: No, sir.

16 HEARING OFFICER VALKOSKY: All right.
17 Cultural Resources. Again, the first question,
18 any new stuff that's going to be submitted on this
19 from Applicant?

20 MR. ABREU: No, sir.

21 HEARING OFFICER VALKOSKY: Any new
22 information from Staff on Cultural?

23 MS. WILLIS: No, Mr. Valkosky, but we
24 would request that these witnesses, if these
25 dates, the 13th and the 14th, are the dates for

1 those hearings, that they be able to present on
2 the 13th. There's a conflict with another case on
3 the 14th.

4 HEARING OFFICER VALKOSKY: Okay. Ms.
5 Prevetti, the City of San Jose indicated that it
6 may wish to provide a witness on Cultural. What
7 is the City's desire on this?

8 MS. PREVETTI: We will have no
9 witnesses. Thank you.

10 HEARING OFFICER VALKOSKY: No witness.
11 Okay, thank you.

12 Okay. Cross examination, Mr. Williams,
13 on Cultural Resources?

14 MR. WILLIAMS: Just ten minutes of brief
15 cross.

16 HEARING OFFICER VALKOSKY: On what
17 particular area, if I may ask?

18 MR. WILLIAMS: The issue of --

19 HEARING OFFICER VALKOSKY: Mr. Williams
20 --

21 MR. WILLIAMS: I'll start again. Mr.
22 Williams. The issue in Cultural Resources is the
23 degree to which the -- the trenching was properly
24 done and the degree to which there has been proper
25 mitigation in the area of Cultural Resources.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you.

3 City of Morgan --

4 MS. CORD: The Santa Teresa Citizens
5 Action Group is not calling any witnesses. Thank
6 you.

7 HEARING OFFICER VALKOSKY: Okay. Ms.
8 Cord, I -- I apologize. I thought Mr. Wade was --
9 was representing the Santa Teresa Citizen Action
10 Group --

11 MS. CORD: No.

12 HEARING OFFICER VALKOSKY: -- since he
13 filed the Prehearing Conference Statement.

14 MS. CORD: Well, we did file jointly,
15 but no, he's an Intervenor as a private citizen.

16 HEARING OFFICER VALKOSKY: Okay. All
17 right. Okay.

18 MS. CORD: Elizabeth Cord, C-o-r-d,
19 representing Santa Teresa Citizen Action Group.
20 Thank you.

21 HEARING OFFICER VALKOSKY: Okay, my
22 apologies for before. It wasn't intentional.

23 MS. CORD: This time I'll let it slide.

24 HEARING OFFICER VALKOSKY: Thank you.

25 (Laughter.)

1 HEARING OFFICER VALKOSKY: City of
2 Morgan Hill.

3 MS. LEICHTER: No, sir. No cross.

4 HEARING OFFICER VALKOSKY: Mr. Wade.

5 MR. WADE: No.

6 HEARING OFFICER VALKOSKY: CVRP?

7 Okay. Mr. Boyd.

8 MR. BOYD: Okay. I'm going to request
9 an hour of cross examination, and I have three
10 witnesses, Dr. Leventhal, from San Jose State,
11 Katherine Davidson. These are two archeologists
12 that did reconnaissance work on the project and
13 provided the written reports that I've submitted
14 and that you've already received.

15 HEARING OFFICER VALKOSKY: Okay. Now,
16 are you going to have these witnesses testify at
17 the hearing?

18 MR. BOYD: Yes, sir.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. BOYD: On their -- on their written
21 testimony that you've already been provided.

22 HEARING OFFICER VALKOSKY: Okay. Could
23 you spell the names of the witnesses for me,
24 please?

25 MR. BOYD: Dr. Leventhal is L-e-v-e-n-t-

1 h-a-l.

2 HEARING OFFICER VALKOSKY: L-e-v-e-n-t-
3 h-a-l.

4 MR. BOYD: That's correct. And then the
5 other witness is Katherine Davidson, that's K-a-t-
6 h-e-r-i-n-e, and Davidson is D-a-v-i-d-s-o-n. And
7 the other witness is Rosemary Cambra, the
8 Chairwoman of the Muwekme Ohlome Tribe. And her
9 name is spelled R-o-s-e-m-a-r-y, and Cambra is C-
10 a-m-b-r-a.

11 HEARING OFFICER VALKOSKY: Okay. And
12 how long will the direct examination --

13 MR. BOYD: About an hour. I figure on
14 that.

15 HEARING OFFICER VALKOSKY: An hour
16 total, for the three witnesses?

17 MR. BOYD: For all -- yeah.

18 HEARING OFFICER VALKOSKY: Okay. And
19 how long will your cross examination take?

20 MR. BOYD: I also estimate that about an
21 hour.

22 HEARING OFFICER VALKOSKY: Okay. Now,
23 understand that when -- when could you have your
24 witnesses ready to submit their prepared
25 testimony?

1 MR. BOYD: Oh, as I said earlier, my
2 witnesses that I've cited have already provided
3 written -- written statements on the site, have --
4 did survey work on the site. And they're --
5 they're all online, on the Web site. If you look
6 under PSA comments on Cultural Resources, you will
7 -- you will see that under there.

8 And the name of the Indian tribe is
9 Muwekma Ohlone, and that's spelled M-u-w-e-k-m-a,
10 and then Ohlone is O-h-l-o-n-e.

11 HEARING OFFICER VALKOSKY: Okay. Does
12 Applicant have any objection, or does Applicant
13 have this testimony available?

14 MR. HARRIS: We're working under the
15 impression that -- that the Applicant -- or,
16 excuse me, Mr. Boyd will pre-file that testimony.
17 And based upon that review, then we'll have some
18 idea of whether we will have cross, and how much.
19 And so I have no idea what that testimony looks
20 like, at this point.

21 MR. BOYD: I'm not providing any new
22 testimony.

23 HEARING OFFICER VALKOSKY: Mr. Boyd,
24 just a second. Is Staff aware of the documents
25 that Mr. Boyd is referring to?

1 MS. WILLIS: I believe that I have seen
2 documents that were comments on other documents,
3 but we haven't seen any testimony.

4 MR. BOYD: And --

5 MS. WILLIS: Excuse me. And I would
6 request, just to say this in limited confusion,
7 that we do get some prefiled testimony that is,
8 you know, that is identified as testimony.

9 HEARING OFFICER VALKOSKY: Yeah, Mr.
10 Boyd. I think that would clarify it for everyone.

11 MR. BOYD: Certainly.

12 HEARING OFFICER VALKOSKY: One of the
13 things we try to avoid is confusion. So could you
14 have this testimony filed by December 7th?

15 MR. BOYD: Certainly. We could file it
16 tomorrow. Just let me clarify what you're asking
17 for. Just to remind you, I think it was back in
18 July that the -- the Commission issued a data
19 request to CARE on this issue, and I had a
20 deadline to respond, which I just barely made.
21 And that was included in the response. And it's a
22 response to the data request issued by you that
23 that testimony is included in.

24 And I would be happy to take the -- the
25 experts' written testimony and resubmit it as

1 such, if you so choose.

2 HEARING OFFICER VALKOSKY: Thank you,
3 Mr. Boyd. And, again, just solely in the interest
4 of minimizing confusion and misunderstanding, I
5 think that would be appropriate. Thank you.

6 MR. BOYD: And I will do that. I'm
7 going to leave in a few minutes, and I will do
8 that with the other witnesses that I'm asking for
9 on Biological Resources and also on Air impacts.
10 And that's the only other witnesses that I'm
11 proposing.

12 HEARING OFFICER VALKOSKY: Well, I'm
13 going to break my own rule and go out of order,
14 since -- since you are leaving. Just let me
15 clarify this. I'm going to jump ahead to those
16 two topics.

17 You said Biological Resources, you're
18 going to have a witness on?

19 MR. BOYD: Yeah. Actually, there's a
20 third that I missed, which is Socioeconomics.

21 HEARING OFFICER VALKOSKY: Okay. Let's
22 -- let's start with Biological Resources. Who
23 will your witness be?

24 MR. BOYD: Dr. Sean Smallwood.

25 HEARING OFFICER VALKOSKY: Smallwood.

1 Okay. And how long will the direct testimony --

2 MR. BOYD: I anticipate one hour from
3 him, and one hour of cross.

4 HEARING OFFICER VALKOSKY: Okay. All
5 right. Your next topic was Socioeconomics?

6 MR. BOYD: Right. And I have a
7 Environmental Justice witness I wanted to use, a
8 Mr. Jim McDonald, of the Pittsburgh Unified School
9 District. And a half an hour there is all I'm
10 proposing.

11 HEARING OFFICER VALKOSKY: And your
12 cross?

13 MR. BOYD: The same, a half an hour. A
14 half an hour.

15 HEARING OFFICER VALKOSKY: And your
16 final witness was on Air Quality?

17 MR. BOYD: Air Quality and Public
18 Health, and I have Dr. Paw-u, that's P-a-s-dash-u,
19 of UC Davis.

20 HEARING OFFICER VALKOSKY: Could you
21 spell that again for me? I missed it.

22 MR. BOYD: Dr. Paw-u, P-a-w, and then a
23 dash, and then a u. And don't ask me to say his
24 first name, because --

25 HEARING OFFICER VALKOSKY: That's fine.

1 That's fine.

2 MR. BOYD: And Greg Gilbert, of Goaline
3 Technologies.

4 HEARING OFFICER VALKOSKY: Okay. And
5 your estimated time for direct examination?

6 MR. BOYD: I have for that one and a
7 half hours, and one hour for cross. I figure
8 that's going to be a hot topic.

9 HEARING OFFICER VALKOSKY: I expect
10 you're going to be right.

11 Okay.

12 MR. BOYD: That's it. And then I have
13 no other -- on all the other cross examinations --

14 HEARING OFFICER VALKOSKY: Yes.

15 MR. BOYD: -- there are like only short,
16 nothing more than ten minutes that I'm asking for.

17 HEARING OFFICER VALKOSKY: Okay, about
18 ten minutes on -- okay. If I could just get those
19 areas down so that the record is clear.

20 Reliability, do you --

21 MR. BOYD: Yeah, I'm going go give you a
22 copy right here of that, and I'll sign it for you
23 and everything.

24 HEARING OFFICER VALKOSKY: No, I'm just
25 trying to inform the other parties, too. That's

1 all, Mr. Boyd.

2 MR. BOYD: Okay.

3 HEARING OFFICER VALKOSKY: Why don't you
4 just indicate to me, starting with Group I, the
5 topics on which you wish to cross examine for your
6 ten minutes.

7 MR. BOYD: Okay. Okay, for ten minutes,
8 I have Waste Management, I have Facilities Design,
9 I have Reliability, Worker Safety.

10 On the next page, under Traffic,
11 Hazardous Materials, and Visual Resources. And I
12 didn't finish -- I didn't figure out Land Use and
13 Transmission System and Alternatives yet. But I
14 think Alternatives -- my guess is at least a half
15 an hour on Alternatives, so. Since that's another
16 hot topic.

17 HEARING OFFICER VALKOSKY: All right.
18 Thirty minutes on Socioeconomics. And Land Use,
19 your estimate was what?

20 MR. BOYD: Land Use, I'd say that's
21 probably a 30 minute one, too, unfortunately.

22 HEARING OFFICER VALKOSKY: Soil and
23 Water was how long?

24 MR. BOYD: Soil and Water, I had 15
25 minutes. Water could be --

1 HEARING OFFICER VALKOSKY: The Visual is
2 how long?

3 MR. BOYD: What did I put on Visual here
4 -- I put ten minutes.

5 HEARING OFFICER VALKOSKY: Okay. I
6 guess -- is that it?

7 MR. BOYD: That's it.

8 HEARING OFFICER VALKOSKY: And if you
9 could just give me a copy of that so that I can
10 make sure.

11 MR. BOYD: Certainly.

12 HEARING OFFICER VALKOSKY: Thank you.
13 We won't --

14 MR. ELLISON: Mr. Valkosky, before Mr.
15 Boyd leaves -- this is Chris Ellison, for the
16 Applicant.

17 I've got a generic concern that I want
18 to discuss before Mr. Boyd leaves. I want to make
19 sure that he understands, and that all Intervenors
20 understand, and that we understand, whether the
21 Commission intends to follow its past practice of
22 requiring that testimony be prefiled. The direct
23 testimony estimates that we're speaking to here
24 are summaries of the written prefiled testimony.

25 I agree with Ms. Grueneich about the no

1 surprise rule. The oral direct testimony, in past
2 cases that I'm familiar with, is not intended to
3 present something new beyond what's in the
4 prefiled testimony.

5 And lastly, that the prefiled testimony
6 would include resumes of the various witnesses.

7 HEARING OFFICER VALKOSKY: That is
8 correct. And that is typically what's specified
9 in a notice of Evidentiary Hearings.

10 MR. ELLISON: Okay. I just wanted to
11 make sure there's no confusion before Mr. Boyd
12 leaves, and that he understands that.

13 MR. BOYD: No, I understand that. And,
14 in fact, I believe that I've complied with that
15 requirement, except for probably Greg Gilbert and
16 Jim McDonald's testimony. All the other things
17 you already have written materials from those
18 witnesses.

19 MR. ELLISON: Well, again, I --

20 MR. BOYD: And I will be basically just
21 resubmitting it as my testimony.

22 HEARING OFFICER VALKOSKY: That's --
23 with --

24 MR. BOYD: With the resumes.

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. BOYD: Which have already been
2 submitted for my experts.

3 HEARING OFFICER VALKOSKY: Right. But
4 again, we're trying to avoid confusion, or
5 unnecessary --

6 MR. ELLISON: Okay. I'll re-do it.

7 HEARING OFFICER VALKOSKY: Thank you,
8 Mr. Boyd.

9 Okay. Anything else for Cultural? And
10 again, I apologize for having gone out of order,
11 but I was attempting to accommodate Mr. Boyd.

12 MR. BOYD: Thank you very much.

13 HEARING OFFICER VALKOSKY: You bet.

14 Anything else on Cultural?

15 Okay. Transmission Line Safety and
16 Nuisance. Any new information from Applicant that
17 we can look forward to?

18 No. From Staff on -- okay.

19 Mr. Williams. Cross examination on this
20 topic?

21 MR. WILLIAMS: Yes, sir. I'd like to
22 see this topic moved to page 2. I think this is
23 sufficiently complicated that, in all honesty, if
24 I can use a euphemism, you're fast pitching this.
25 This transmission line business should be dealt

1 with in January.

2 HEARING OFFICER VALKOSKY: Sir, this is
3 under our topic, our report for Transmission Line
4 Safety and Nuisance. Typically, we're not --
5 we're not talking about Transmission System
6 Engineering considerations. Reliability
7 considerations. The topic most frequently
8 addressed in this is the health effects, or the
9 lack thereof, from any electromagnetic fields
10 resulting from the transmission tie line which
11 goes from the power plant to the interconnected
12 system. That -- that's what we're talking about.

13 There are --

14 MR. WILLIAMS: Thank you, sir. I see
15 now that it's dealt with in late January and early
16 February, so I would have no comment here. Thank
17 you.

18 HEARING OFFICER VALKOSKY: Thank you.

19 City of Morgan Hill, on Transmission
20 Line Safety and Nuisance?

21 MS. LEICHTER: We anticipate no cross
22 examination.

23 HEARING OFFICER VALKOSKY: Mr. Wade.

24 MR. WADE: No.

25 HEARING OFFICER VALKOSKY: Okay. Mr.

1 Scholz.

2 MR. SCHOLZ: No, sir.

3 HEARING OFFICER VALKOSKY: CVRP. Mr.
4 Murphy. Yeah, that's one.

5 Okay. Is there any objection to taking
6 evidence on this topic in the form of a
7 declaration, and thereby not requiring the
8 appearance of live witnesses?

9 I see there is no objection. We'll put
10 this down as a potential for a declaration.

11 The next topic is Waste Management. Any
12 new info coming in from Applicant? No.

13 Staff? No. Okay.

14 Mr. Williams, desire to cross examine or
15 present a witness on this?

16 MR. WILLIAMS: Is the -- the salt from
17 the cooling tower bottoms dealt with on the
18 following pages here? The whole issue of -- of
19 the salt treatment strikes me as still open. So
20 if that's what you intend to deal with here, I
21 would have --

22 HEARING OFFICER VALKOSKY: Waste --
23 Waste Management, and I'll turn to Mr. Richins in
24 a second -- typically deals with the handling and
25 disposal of construction wastes and certain

1 routine operational wastes from an industrial
2 facility.

3 Mr. Richins, would you like to -- could
4 you address Mr. Williams' question specifically,
5 or explore it further?

6 MR. RICHINS: I think -- this is Paul
7 Richins, with the Energy Commission Staff.

8 I think the question he's raising would
9 probably be addressed under Water. But I'm not
10 really clear of the area he wants to consider. I
11 think that's --

12 MR. WILLIAMS: Well, as -- as long as
13 that aspect of Waste Management is covered under
14 Water, I'm perfectly happy to delay it. Thank
15 you.

16 HEARING OFFICER VALKOSKY: Okay.

17 MR. WILLIAMS: No comment here.

18 HEARING OFFICER VALKOSKY: City of
19 Morgan Hill.

20 MS. LEICHTER: Actually, Mr. Valkosky,
21 we -- if I could ask you to clarify a prior
22 statement that you made, in terms of the
23 submission of declarations instead of live
24 testimony.

25 I understood you to say on one of the

1 prior topics that we would -- the Intervenors
2 would not be precluded from asking individualized
3 questions, but if they anticipated substantive
4 cross examination we should be giving you a time
5 estimate of the --

6 HEARING OFFICER VALKOSKY: Right. And
7 -- and what I got from Transmission Line Safety
8 and Nuisance is that no one had any questions on
9 it at all.

10 MS. LEICHTER: That is correct. But my
11 follow-up question after clarification of that
12 procedural rule is whether or not you will accept
13 cross declarations in opposition.

14 HEARING OFFICER VALKOSKY: I'm sorry,
15 you lost me there.

16 MS. LEICHTER: If you will accept
17 individualized cross examination at the hearing
18 itself, if a witness is appearing, without us
19 having to state at this time we anticipate ten
20 minutes of cross examination. Which I understood
21 you to say --

22 HEARING OFFICER VALKOSKY: Okay. Yes.
23 I would prefer at this time that you state your
24 desire, and an estimate of your cross examination
25 of a witness. There's two reasons for this.

1 One is in the topic of Transmission Line
2 Safety and Nuisance, if no one is interested in
3 asking any questions of the witnesses, we'll
4 dispense with the witness and we'll take the
5 subject basically by stipulation on declaration.

6 The other thing is it's a -- it's a
7 reality, it's a scheduling concern. I've got to
8 know approximately how much time people think they
9 need so that I can get a realistic grasp on how
10 many topics to schedule within a given period.

11 Now, does this mean that you've got to
12 ask every -- no. Certainly, you know, we're --
13 we're loose enough that if there are a question or
14 two that occur to someone, yes, you can -- you can
15 ask.

16 If, all of a sudden, you discover, my
17 God, I'd like to cross examine this witness for
18 four or five hours, well, that just isn't going to
19 happen unless you so indicate tonight.

20 MS. LEICHTER: That's not what I'm
21 asking, sir.

22 HEARING OFFICER VALKOSKY: Okay.

23 MS. LEICHTER: And having suffered
24 through a seven-hour Council meeting last night, I
25 can truly appreciate your need to schedule.

1 HEARING OFFICER VALKOSKY: Thank you.

2 MS. LEICHTER: I can assure you.

3 (Laughter.)

4 MS. LEICHTER: My question is, if there
5 is a statement submitted in a declaration upon
6 which we cross -- wish to cross examine or submit
7 a contra-declaration, what is the procedural
8 mechanism for doing that?

9 HEARING OFFICER VALKOSKY: Okay.

10 MS. LEICHTER: Without having to burden
11 you with live testimony.

12 HEARING OFFICER VALKOSKY: Okay. You
13 can then submit a declaration in opposition, and
14 fundamentally, what will most likely happen is
15 that I would call a live witness to get it
16 straightened out on the stand, rather than do it
17 in paper and with the assorted ambiguities.

18 Okay. That's likely what'll happen.

19 MR. ELLISON: Mr. Valkosky, perhaps I
20 can contribute to this.

21 The -- this is based on my experience
22 with the Commission in the past. The declarations
23 that Mr. Valkosky is referring to are simply
24 declarations referring to the prefiled testimony,
25 saying that it's true and correct. Normally, when

1 a witness appears live they're sworn. That's all
2 they are. They wouldn't include a substantive
3 statement other than verifying the testimony that
4 was previously submitted.

5 So if your concern is that somehow a
6 party would, you know, sneak new substantive
7 evidence in in the form of these declarations, I
8 don't think the Commission would permit that.

9 HEARING OFFICER VALKOSKY: No, I think
10 -- I think that's correct. And I apologize if I
11 wasn't clear on that. But what Mr. Ellison says
12 is accurate. What we refer to as taking something
13 by declaration, it's essentially a sworn statement
14 saying what I've said already in my previous
15 testimony, and identifying those exhibits, is true
16 and correct.

17 MS. LEICHTER: I appreciate your
18 clarification. The City of Morgan Hill reserves
19 no time for cross examination.

20 HEARING OFFICER VALKOSKY: Okay. Thank
21 you.

22 MS. LEICHTER: I appreciate the
23 clarification, and the City of Morgan Hill
24 reserves no time for cross examination upon Waste
25 Management.

1 HEARING OFFICER VALKOSKY: Mr. Wade.

2 Mr. Scholz.

3 MR. SCHOLZ: No, sir.

4 MS. PREVETTI: I have a question. City
5 of San Jose, Laurel Prevetti.

6 In the Applicant's Prehearing Conference
7 Statement, they have added Waste Water Permitting
8 under the topic of Waste Management. And as I
9 understood from the prior discussion, Waste Water
10 Permitting would be covered under the Water
11 Resources topic, and I wish confirmation on that.

12 HEARING OFFICER VALKOSKY: It is
13 typically covered under the Water Resources topic.
14 Ms. --

15 MS. WILLIS: That's our understanding,
16 as well.

17 HEARING OFFICER VALKOSKY: Okay.

18 Mr. Harris, and/or Ellison, did you have
19 a contrary understanding?

20 MR. HARRIS: Where are you referring to,
21 Laurel?

22 MS. PREVETTI: Page 6, under the detail
23 -- let me see, which exhibit is this. It's under
24 Attachment A, page 6, the statement for Frederick
25 Tornatore -- apologize if I've pronounced this

1 name incorrectly. In the first paragraph, it
2 mentions all the various topics he would be
3 testifying on, including Air and Waste Water
4 Permitting.

5 MR. HARRIS: I think you're reading his
6 qualifications.

7 MS. PREVETTI: Okay. But you don't
8 anticipate that he will be talking on --

9 MR. HARRIS: No.

10 MS. PREVETTI: -- that.

11 MR. HARRIS: No. The category at the
12 top, Hazardous Waste Materials Handling -- if you
13 look at the last paragraph, those are the two
14 topics that he'll be testifying on.

15 MS. PREVETTI: Thank you.

16 HEARING OFFICER VALKOSKY: Okay. Ms.
17 Prevetti, I take it the City of San Jose will not
18 be offering a witness on this topic; is that
19 correct?

20 MS. PREVETTI: That is correct. With
21 this clarification, we will not.

22 HEARING OFFICER VALKOSKY: I will note
23 for the record that Mr. Boyd had indicated a
24 desire for ten minutes of cross on this topic.

25 Okay. Anything else on Waste

1 Management?

2 Facility Design. Anything going to be
3 coming in that's new from Applicant?

4 Staff?

5 Okay. Both -- both nos.

6 Mr. Williams, desire to cross examine?

7 MR. WILLIAMS: Yes, sir.

8 HEARING OFFICER VALKOSKY: Please speak
9 into the mic.

10 MR. WILLIAMS: Yeah. At the City
11 Council meeting two nights ago, the Applicant
12 indicated a willingness to modify the design to
13 retrofit SCONOX. I think in view of that proffer,
14 I don't know if it's still valid in view of the
15 fact that the City Council disapproved the
16 application.

17 I think this should be delayed until the
18 January timeframe, so we can understand the basis
19 under which there would be a retrofit for SCONOX.

20 HEARING OFFICER VALKOSKY: Okay. Any
21 response, Mr. -- again, I'm not sure who to refer
22 to in the Applicant's --

23 MR. ABREU: Neither are we. We're not
24 --

25 HEARING OFFICER VALKOSKY: Mr. Abreu.

1 MR. ABREU: -- going to retrofit SCONOX,
2 so I don't think there'd be anything new there to
3 offer. I don't think we're planning to retrofit
4 -- we're not planning to retrofit SCONOX, so
5 there's no new news in the Facility Design --

6 HEARING OFFICER VALKOSKY: Okay. So
7 your Facility Design -- the design, the proposed
8 design of your facility is as it stands today, as
9 modified through the various supplements.

10 MR. WILLIAMS: Well, could I just ask
11 for clarification, then. What was the meaning of
12 Mr. Hildebrand's statement, since he's in the
13 audience here tonight. Was that just to see if he
14 could get some votes?

15 MR. ELLISON: I believe Mr. Hildebrand's
16 statement was saying that when SCONOX is
17 demonstrated and a proven technology, that Calpine
18 would use it on future projects. He was not
19 suggesting it would be retrofitted on this
20 project.

21 MR. WILLIAMS: Future projects. Oh.

22 HEARING OFFICER VALKOSKY: Okay. That
23 -- that's the clarification. Let's get down. Do
24 you wish -- do you wish to cross examine?

25 MR. WILLIAMS: I would like to cross

1 examine. I would --

2 HEARING OFFICER VALKOSKY: Please speak
3 into the microphone.

4 MR. WILLIAMS: I would like to -- I
5 would like to cross examine for 15 minutes, and I
6 would beg that you'd consider deferring this to
7 the second meeting.

8 HEARING OFFICER VALKOSKY: What would be
9 the nature of your cross examination?

10 MR. WILLIAMS: The nature would be the
11 precise -- the precise size of the SCR. The
12 specifications have been substantially changed
13 since the first, so various elements of the design
14 which have been in flux.

15 HEARING OFFICER VALKOSKY: Okay. And
16 why do you think this would have to go to the
17 second group? I mean, as -- as I understand from
18 Applicant, the design has been out there for quite
19 a while. I mean, there's no new information
20 that's been added.

21 MR. WILLIAMS: Well, there was new
22 information added, until it was retracted in this
23 meeting.

24 HEARING OFFICER VALKOSKY: Well, I'm not
25 -- sir, I'm not going to go there. I can't go

1 there.

2 MR. WILLIAMS: Okay, I understand that.
3 Please give me 15 minutes, and I assure you I will
4 provide an outline of the points I intend to cover
5 by the -- by the 7th.

6 HEARING OFFICER VALKOSKY: Okay. I'm
7 sorry. Ms. Willis.

8 MS. WILLIS: Yes. Staff would consider
9 that anything regarding SCONOX or SCR would fall
10 into Air Quality, not Facility Design. And that
11 -- that would be our intention, that we would be
12 doing it under that -- our witness -- at least our
13 witness would be the Air Quality witness that
14 would be able to address that issue.

15 MR. WILLIAMS: Well, you know, this --
16 this is a multi-dimensional matrix that you're
17 hitting me with for the first time. You know, my
18 view of what logically follows -- is this where I
19 could talk about whether there are quick interrupt
20 valves on the gas line?

21 MR. RICHINS: We would cover --

22 MR. WILLIAMS: You would cover that
23 someplace else?

24 MR. RICHINS: -- Paul Richins. Yes,
25 this is Paul Richins, with Staff. That's under

1 Public Health and Safety.

2 MR. WILLIAMS: Okay.

3 MR. RICHINS: And we would have a
4 witness that would talk about that under Public
5 Health and Safety.

6 MR. WILLIAMS: I would reserve ten
7 minutes, and I'll --

8 HEARING OFFICER VALKOSKY: All right.

9 MR. WILLIAMS: -- withdraw the -- if
10 there's nothing substantive here.

11 MR. RICHINS: I can tell you this, that
12 our witness would not be able to answer questions
13 about SCONOX, as it relates to Facility Design.

14 HEARING OFFICER VALKOSKY: Yeah.
15 Facility Design, as we have traditionally done it,
16 is essentially the basic layout and equipment of
17 the project.

18 MR. WILLIAMS: Well, if this question on
19 Facility Design --

20 HEARING OFFICER VALKOSKY: The building,
21 the turbine generators, things like that.

22 MR. WILLIAMS: -- would be the size of
23 the SCR envelope. They've doubled or quadrupled
24 the performance of the Selective Catalytic
25 Reduction by treating it as a black box. Now,

1 they -- they probably had to make that black box
2 bigger.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. WILLIAMS: So I would like to see
5 specifically what they've done there.

6 HEARING OFFICER VALKOSKY: Okay, fine.
7 We'll reserve your time.

8 MR. WILLIAMS: Thank you, sir.

9 HEARING OFFICER VALKOSKY: Ms. Cord.
10 Facility Design.

11 MS. CORD: Yeah. I guess you're saying
12 that Air Quality is the time to ask for a
13 clarification of what Mr. Abreu's letter to the
14 City, that was delivered last Wednesday, that says
15 that the Applicant would be willing to eliminate
16 the use of aqueous ammonia at this plant --

17 HEARING OFFICER VALKOSKY: Okay.
18 Aqueous ammonia would be -- a Haz Mat, that's
19 related to SCR. The use of the abatement
20 technology is an Air Quality issue. Whether it be
21 SCR, SCONOX, ZONON, whatever is available out
22 there.

23 MS. CORD: Good. Okay.

24 HEARING OFFICER VALKOSKY: But that's
25 typically -- well, as I say, you've got an

1 overlap. Aqueous ammonia is a Haz Mat question.
2 The use of the Air Quality technology is Air
3 Quality, the use of the abatement technology, I'm
4 sorry.

5 MS. CORD: Okay. Thank you for that
6 clarification.

7 HEARING OFFICER VALKOSKY: You bet.
8 City of Morgan Hill?

9 MS. LEICHTER: Yes. The City of Morgan
10 Hill withdraws its request for cross examination
11 on Facility Design.

12 HEARING OFFICER VALKOSKY: Thank you.

13 Mr. Wade.

14 MR. WADE: No time required. Thank you.

15 HEARING OFFICER VALKOSKY: Mr. Scholz.

16 MR. SCHOLZ: I want to -- I don't think
17 I'll need any time. I think Mr. Williams will
18 probably address, I don't want to be redundant.
19 But in the workshops, it was my impression when we
20 were asking questions about Facility Design in the
21 workshops, it was basically a black box. These
22 are the parameters that this facility is going to
23 hit, it's going to hit its marks. If it doesn't
24 hit its marks, you know, they can't be sited, that
25 kind of thing, you know.

1 But really, we don't know what the
2 facility is going to --

3 HEARING OFFICER VALKOSKY: That's --

4 MR. SCHOLZ: -- how it's going to be
5 designed to -- to do what it has to do --

6 HEARING OFFICER VALKOSKY: Again, I
7 mean, I think we're talking about different
8 things. Facility Design is essentially the
9 layout, the footprint of the hardware on the
10 ground. The types of turbine generators, the
11 equipment, redundancy, piping and valves, and
12 stuff like that.

13 Is there -- is there anything else that
14 I'm missing, Mr. Richins?

15 MR. RICHINS: Well, a primary discussion
16 of the building standards and the regulations that
17 they would be required to follow in the
18 construction of the different pieces of equipment
19 there. So it's a discussion of LORS and building
20 standards.

21 The project hasn't been designed, and it
22 won't be engineered until later, and so I know in
23 the workshops that we held, a lot of the level of
24 questions went to engineering, which has not been
25 done, and so we were not able -- the Applicant was

1 not able to address those detailed questions.

2 MR. SCHOLZ: So that was very
3 frustrating in the workshops, because we really
4 couldn't get into any substantive material. And
5 when do we, I guess is what I'm asking. I'm
6 trying to do it in the right place at the right
7 time, but we didn't -- apparently the workshops
8 weren't right, so we thought --

9 HEARING OFFICER VALKOSKY: Well, again,
10 I think if you've got, you know, when -- when does
11 the final design come in, I think that's a fair
12 question. And, you know, that's certainly
13 something that's appropriate for the design
14 witnesses, in my opinion, at least. You know.

15 I mean, so -- so if that's the kind of
16 thing you'd like to ask, I think that's okay.

17 MR. SCHOLZ: Okay. Then I'll reserve 10
18 or 15 minutes.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. SCHOLZ: And I'm not trying to be
21 redundant at all, you know.

22 HEARING OFFICER VALKOSKY: No, I -- I
23 understand that. But, I mean, I -- I think if
24 those are the nature of the questions you have, to
25 the extent our witnesses, or the Staff's witnesses

1 can answer them, I think they should.

2 MR. SCHOLZ: And to give everybody a
3 heads up, I'm sure, you know, the Applicant
4 remembers kind of the direction I was going is how
5 the project description was for this facility, as
6 it related to Alternatives, or whatever. You
7 know, it had to have a 14 acre site footprint.
8 Where we were comparing Crockett, which was -- I
9 understand it's a slightly smaller facility in
10 megawattage, but, you know, it's done. It was
11 engineered in a very small footprint.

12 So how it related to what sites are
13 feasible, you know, we had to look for another 14
14 acre site. But if we saw some engineering --

15 HEARING OFFICER VALKOSKY: Okay. Well,
16 I think that's --

17 MR. SCHOLZ: -- we could see that you
18 could do this project in less than 15 acres.

19 HEARING OFFICER VALKOSKY: Well, again,
20 I'm not making any conclusions. But certainly the
21 people that will explain, the expert witnesses on
22 Facility Design, are all engineers, and I think
23 that's probably the best -- best place for you to
24 direct your -- your questions.

25 MR. SCHOLZ: Okay.

1 HEARING OFFICER VALKOSKY: All right.

2 Isa, you had --

3 MR. AJLOUNY: Ten minutes.

4 HEARING OFFICER VALKOSKY: -- ten
5 minutes?

6 MR. AJLOUNY: Yeah. And --

7 HEARING OFFICER VALKOSKY: You want to
8 -- okay.

9 MR. AJLOUNY: -- I'm trying to be
10 conservative. I mean, I won't know if it'll take
11 longer until I ask the questions and see the
12 answers I hear. So I -- I hope you don't hold me
13 to the fire on that ten minutes.

14 HEARING OFFICER VALKOSKY: No, there's
15 -- there's no timeclock running. We're just
16 trying to get everyone's best good faith estimates
17 on it, that's all.

18 MR. AJLOUNY: Okay. Can I mention one
19 thing? And I hate to be out of line here, but
20 there is a very significant letter written to the
21 City of San Jose, and I just wonder -- I'm not
22 trying to hit any buttons here. I just really
23 want to know if this is this part of a --

24 PRESIDING MEMBER LAURIE: Is it relevant
25 to this question of scheduling?

1 MR. AJLOUNY: Well, yes, in the sense
2 that I was under the understanding, with the
3 others, that this letter was saying they were
4 changing the design. So I just want to know, is
5 that true? I mean, is this letter -- I guess this
6 is the -- you know, I just need a final --

7 HEARING OFFICER VALKOSKY: Sir, I --
8 Isa, I have no idea what letter you're talking
9 about. Could you just --

10 MR. AJLOUNY: I have it right here, and
11 I'll read it --

12 HEARING OFFICER VALKOSKY: Just identify
13 it and ask the Applicant the questions --

14 MR. AJLOUNY: Okay. In your --

15 HEARING OFFICER VALKOSKY: Okay. Fine.
16 I think --

17 MR. AJLOUNY: Again, I'm not trying to
18 be irritating to anybody. I'm just trying to
19 understand the process.

20 The letter written November 22nd, to the
21 City Council Members. I have the one to Charlotte
22 Powers. There's a second bullet mentioning
23 commitment to a licensing condition requiring
24 Metcalf, or MEC, to eliminate the use of aqueous
25 ammonia as soon as appropriate alternative system

1 is feasible and approved by regulators.

2 And I just want to know, so it is your
3 understanding there's no technology? I mean, from
4 talking to the City Council, they understood that
5 there -- it is approved by regulators and it is
6 feasible, and so I guess I assumed, and maybe
7 others did, assumed that you were offering that.

8 So I need to know if you are offering
9 it, is there going to be changes, or are you going
10 as planned, and -- and get that on the record.
11 Because I think the City Council would be very
12 interested in hearing that.

13 MR. ABREU: That was a letter we sent to
14 the City Council offering some additional
15 conditions regarding, you know, looking at
16 alternatives for aqueous ammonia. You know, that
17 was an offer to the City Council before the City
18 Council meeting. We're not planning to make any
19 changes in our project description as we move
20 forward.

21 MR. AJLOUNY: Okay. So the offer's
22 withdrawn because you didn't get the votes you
23 needed then?

24 MR. ABREU: It was offered to the City
25 Council at that time, as part of the conditions

1 for approval of the project by the City Council.

2 HEARING OFFICER VALKOSKY: Okay.

3 Sir, please. Okay.

4 MR. AJLOUNY: I'm sorry. I just -- I
5 needed to understand that.

6 HEARING OFFICER VALKOSKY: Okay. Yeah,
7 I think that -- you know, I certainly realize the
8 concern of the local groups, and I think you
9 deserve an answer.

10 Okay. Isa, where I left off, you had --
11 you wanted 10 or 15 minutes on Facility Design.

12 MR. AJLOUNY: I have ten minutes. It
13 might take 15 minutes.

14 HEARING OFFICER VALKOSKY: Okay. No,
15 that's --

16 MR. AJLOUNY: Yeah.

17 HEARING OFFICER VALKOSKY: Anything on
18 Facility Design, Ms. Grueneich?

19 MS. GRUENEICH: Yes. I apologize for
20 coming back to this, but I wanted to make sure
21 that I was clear.

22 When I brought up the issue of the
23 Project Description, and we're now getting into it
24 under Facility Design, one of my questions was
25 specifically going to this November 22nd letter,

1 and the bullet point in which it does say a
2 commitment to a licensing condition. And the
3 letter was from Mr. Abreu. And my understanding
4 was, hearing tonight, that there is no change in
5 the Project Description from what was filed in the
6 AFC, that it is no longer the Applicant's position
7 to commit to such a licensing condition as set
8 forth in this letter.

9 Am I correct?

10 MR. ABREU: That's correct.

11 MS. GRUENEICH: Okay. Thank you. So
12 that -- so we don't have any cross examination.

13 HEARING OFFICER VALKOSKY: That's --
14 okay. Fine. That's the answer to that.

15 Ms. Prevetti.

16 MS. PREVETTI: Thank you. We have no
17 need for cross examination.

18 HEARING OFFICER VALKOSKY: Mr. Murphy?

19 MR. MURPHY: No.

20 HEARING OFFICER VALKOSKY: Okay. I just
21 noticed, and I -- I have to do a take-back on
22 Transmission Line Safety and Nuisance. I just
23 noticed that Mr. Boyd indicated a desire to cross
24 examine the witnesses, so they will not be
25 susceptible to declaration.

1 Sorry for that.

2 MR. HARRIS: While you're taking a look
3 back, too, could you put Geo and -- Geological and
4 Paleontological Resources together? It's my
5 understanding there's -- there's no request for
6 cross examination on the Paleo issues, so you
7 might use that as a -- a candidate for --

8 HEARING OFFICER VALKOSKY: Well, we have
9 Geology and Paleontological Resources, I know you
10 have several witnesses on them. The grouping I
11 used is -- is essentially the grouping as it
12 appears in the Staff Assessment, where it appears
13 as a single topic.

14 MR. HARRIS: Okay. We just had an
15 interest in having the Paleo witness submit by
16 declaration, since there's no request for cross on
17 that issue.

18 HEARING OFFICER VALKOSKY: Actually, no,
19 I'm not -- I'm not sure. I recall a concern about
20 wanting to make sure the trenches would be
21 excavated properly, which would seem to be -- to
22 avoid a resource disturbance issue. Okay. So I
23 think we'd better have the witness.

24 Efficiency. Anything new from
25 Applicant? No.

1 Staff?

2 MS. WILLIS: No.

3 HEARING OFFICER VALKOSKY: All right.

4 Any desire to cross examine on the topic of
5 Efficiency. Mr. Williams.

6 MR. WILLIAMS: Pass. Thank you.

7 HEARING OFFICER VALKOSKY: Ms. Cord.

8 MS. CORD: No.

9 HEARING OFFICER VALKOSKY: City of
10 Morgan Hill?

11 MS. LEICHTER: No.

12 HEARING OFFICER VALKOSKY: Ms. Leichter,
13 thank you.

14 Mr. Wade.

15 Mr. Scholz.

16 MR. SCHOLZ: Point of clarification.

17 Natural gas supply, which topic?

18 HEARING OFFICER VALKOSKY: Reliability.

19 MR. SCHOLZ: Thank you. No, no time for
20 this one.

21 MR. AJLOUNY: Efficiency -- this is Isa.
22 Efficiency, would that be -- or let's say the
23 plant, because it might not be, by the time this
24 plant gets built, such great need for power that
25 it maybe only runs like 40 percent.

1 HEARING OFFICER VALKOSKY: No.

2 Efficiency --

3 MR. AJLOUNY: Nothing like that?

4 HEARING OFFICER VALKOSKY: Efficiency is
5 -- is basically concerned with how -- how
6 efficiently the plant transforms the fuel that it
7 burns --

8 MR. AJLOUNY: Is that --

9 HEARING OFFICER VALKOSKY: -- in terms
10 of its heat rate into electricity, and how the --
11 the rate at which --

12 MR. AJLOUNY: Okay.

13 HEARING OFFICER VALKOSKY: -- at which
14 this project will produce electricity. Compares
15 with the -- the other plants in its category, or
16 the -- the industry, as a whole.

17 MR. AJLOUNY: I just -- I guess my
18 concern is running at a lower percent of full
19 capacity, let's say 40 percent, the efficiency is
20 much worse and much more pollutants and things
21 like that, and I just --

22 HEARING OFFICER VALKOSKY: Well, do you
23 wish to cross examine any of the witnesses?

24 MR. AJLOUNY: Well, I -- I would, if
25 that's the place to do it.

1 MR. RICHINS: If you want to -- Paul
2 Richins, with Staff. If you want to talk about
3 air pollution and the relationship with different
4 loading of the power plant, that would come up
5 under Air Quality, not here.

6 MR. AJLOUNY: Great. Thank you.

7 HEARING OFFICER VALKOSKY: Okay. CVRP?
8 No.

9 Mr. Murphy?

10 Okay. So Efficiency, again I'll note
11 that CARE has noticed that it -- CARE noted that
12 he wanted to cross examine on that.

13 Okay. Reliability. And I would note
14 that this includes the reliability of the natural
15 gas fuel supply. Is there anything new from
16 Applicant on this issue?

17 MR. ABREU: No.

18 HEARING OFFICER VALKOSKY: No.

19 Anything new from Staff?

20 MS. WILLIS: No, sir.

21 HEARING OFFICER VALKOSKY: Okay. I
22 would also note that Southern Energy had listed
23 this as one of the topics it was interested in.
24 Southern will become an Intervenor. They filed a
25 timely petition to intervene. Is anyone from

1 Southern here?

2 There is no one from Southern here.

3 Okay.

4 I note that CARE has indicated it wants
5 ten minutes for cross examination on this.

6 Mr. Williams.

7 MR. WILLIAMS: Yes, I would like ten
8 minutes. I would like to deal with the --

9 HEARING OFFICER VALKOSKY: Sir, you --
10 please. Thank you.

11 MR. WILLIAMS: Mr. Williams. I would
12 like to deal with the -- the issues of
13 certification of the fuel supply and the
14 reliability of the fuel supply, under the Public
15 Utility Regulatory Policy Act of 1977, as I
16 recall.

17 HEARING OFFICER VALKOSKY: How long do
18 you want for cross?

19 MR. WILLIAMS: Ten minutes.

20 HEARING OFFICER VALKOSKY: Okay. Ms.
21 Cord.

22 MS. CORD: No. Thank you.

23 HEARING OFFICER VALKOSKY: Ms. Leichter.

24 MS. LEICHTER: No.

25 HEARING OFFICER VALKOSKY: Mr. Wade, you

1 had indicated in your Prehearing Conference
2 Statement that this was an area of concern.

3 MR. WADE: It is, but -- I don't need
4 time for that. Other members of our group do.

5 MR. SCHOLZ: In the interest of
6 conserving --

7 HEARING OFFICER VALKOSKY: Please
8 identify yourself.

9 MR. SCHOLZ: My name is Scott Scholz.
10 In the interest of conserving paper, that was one
11 of the ones that I added to the document that ST
12 Action put together. So I'd like to reserve --

13 HEARING OFFICER VALKOSKY: Okay.

14 MR. SCHOLZ: -- ten minutes. And again,
15 if it's redundant, I would withdraw the --

16 HEARING OFFICER VALKOSKY: Okay, fine.

17 Ten minutes.

18 Isa?

19 MR. AJLOUNY: No, sir.

20 HEARING OFFICER VALKOSKY: CVRP.

21 MS. GRUENEICH: No, sir.

22 HEARING OFFICER VALKOSKY: No.

23 Let's see, Mr. Murphy.

24 MR. MURPHY: No.

25 HEARING OFFICER VALKOSKY: Okay. Worker

1 Safety and Fire Protection. Again, is there
2 anything new that will be forthcoming from
3 Applicant on this?

4 There is not.

5 From Staff.

6 MS. WILLIS: No.

7 HEARING OFFICER VALKOSKY: There is not.

8 Before we get -- we get started. Isa,
9 you indicated that you wanted to have a witness on
10 this topic. And I guess the -- the question I
11 have is if this is the appropriate place for your
12 witness. What is your witness going to testify
13 on?

14 MR. AJLOUNY: My witness -- first, this
15 is Isa. My witness is an expert Haz Mat material
16 handler, and how to deal with it when you have a
17 spill on hazardous materials. And he's going to
18 go through the dangers of aqueous ammonia, and the
19 fact that the nearest fire station that has a haz
20 mat -- I think it would be called, I apologize for
21 that --

22 HEARING OFFICER VALKOSKY: A response
23 team.

24 MR. AJLOUNY: Yeah, a response team,
25 there's only one in San Jose. In the FSA it

1 states over 30 minutes. I think he'll testify
2 there's a good chance for one hour of responding.
3 And I -- I think that's important --

4 HEARING OFFICER VALKOSKY: Okay. Okay.
5 And I -- I don't question its importance. I'm
6 just wondering if it is not more appropriately
7 handled under the Haz Mat topic. And, Staff,
8 could you give me an indication?

9 MS. WILLIS: We -- we were just
10 discussing that. I -- we would probably think
11 this would most -- best be addressed under
12 Hazardous Materials. Although the -- the issue of
13 the time, response time does fall into this
14 category, if -- if the Committee wishes, maybe we
15 could leave that area open to allow your testimony
16 in, you know, at a later date, under Hazardous
17 Materials, but then you can also address the time
18 issue.

19 HEARING OFFICER VALKOSKY: I'm -- no, I
20 mean -- no, it's -- it's a significant concern,
21 there's no doubt about it. And I just want to --

22 MR. AJLOUNY: Well, can I --

23 HEARING OFFICER VALKOSKY: -- know what
24 box to put it in, frankly.

25 MR. AJLOUNY: Mr. Valkosky,, again, I

1 hate to be a pain, but a couple things. I really
2 -- I really need to make something clear.

3 First of all, I agree. That's fine, if
4 you want to change it. The only reason I put it
5 under here is when I read -- in the FSA it was
6 under this category, so that's the only reason.

7 I have no -- you tell me what category.
8 It doesn't matter, as long as my witness can
9 testify.

10 HEARING OFFICER VALKOSKY: Understood,
11 and it's relevant.

12 MR. AJLOUNY: But I really want to
13 emphasize some things that went on through the
14 process. I am still waiting for the routing of
15 the ammonia truck. How can I have my witness
16 testify and write up a testimony and -- and I just
17 heard from the Applicant that there's no --

18 HEARING OFFICER VALKOSKY: And --

19 MR. AJLOUNY: Okay.

20 HEARING OFFICER VALKOSKY: No, no. And
21 those concerns -- and again, I'm just really
22 trying to work through this methodically. Those,
23 I think, are Traffic or -- or Haz Mat concerns.
24 We just haven't gotten there yet.

25 MR. AJLOUNY: Oh, I'm sorry. Okay. I

1 apologize.

2 HEARING OFFICER VALKOSKY: We'll get
3 there. Okay?

4 MR. AJLOUNY: You can see how
5 overwhelming this is for an everyday person.

6 HEARING OFFICER VALKOSKY: I -- I
7 understand. I understand perfectly. No, again,
8 that's -- we're just -- we're just trying to march
9 -- march through it in some sort of logical order.

10 MR. AJLOUNY: I thought it was just -- I
11 totally blew it.

12 MS. WILLIS: Mr. Valkosky, this is Kerry
13 Willis, Staff Counsel.

14 We also -- I just noted that Rick Tyler,
15 who is our witness in Worker Safety, is also one
16 of our witnesses in Hazardous Materials, so he
17 would be there for Hazardous Materials as well,
18 and be able to answer any questions that you might
19 have, if you -- if you wanted to offer your
20 witness under Hazardous Materials instead of
21 Worker Safety and Fire Protection.

22 MR. AJLOUNY: Yeah. I'm agreeing that
23 whatever makes sense. And whatever works and
24 flows better.

25 HEARING OFFICER VALKOSKY: Okay. So --

1 MR. AJLOUNY: So that'll be -- and that
2 makes it better, because I can't -- I would --

3 HEARING OFFICER VALKOSKY: I would -- my
4 preference would be -- my opinion is that your
5 witness would be more properly placed in context
6 under the Hazardous Materials, not the --

7 MR. AJLOUNY: Okay. As long as I can
8 talk about the response, and all that kind of
9 stuff.

10 HEARING OFFICER VALKOSKY: Yeah. Well,
11 Staff has indicated that that is within the
12 expertise of their witness, and admittedly there
13 is an overlap in the subject areas, but it's also
14 within the Haz Mat area, as I understand.

15 MR. AJLOUNY: Well, that would -- that
16 would take care of my third concern, is that
17 there's no way that I can have him put in written
18 testimony by December 7th.

19 HEARING OFFICER VALKOSKY: Then even
20 better.

21 MR. AJLOUNY: So thank you very much for
22 taking my third concern under consideration.

23 HEARING OFFICER VALKOSKY: Occasionally
24 things work. Just don't anybody kind of --

25 (Laughter.)

1 HEARING OFFICER VALKOSKY: No, we'll put
2 that under Haz Mat.

3 CVRP.

4 Ms. Prevetti, you indicated the City may
5 be putting a witness on for Worker Safety?

6 MS. PREVETTI: I have a -- a question
7 for you. We may not have the necessity for a
8 witness, but we may wish to provide some written
9 testimony for the benefit of the Committee. Would
10 that be appropriate, in lieu of testimony?

11 HEARING OFFICER VALKOSKY: Well, that's
12 nice, but to the extent it raises some issues, one
13 of the other parties may wish to examine the
14 witness, and they can't very well do that if it's
15 just a -- a written statement. So the answer is
16 we'd much prefer a -- a live witness.

17 MS. PREVETTI: Okay. I think under this
18 circumstance and the discussion we've just had,
19 then we will have no witnesses.

20 HEARING OFFICER VALKOSKY: No witnesses.
21 Okay, thank you.

22 All right. CARE has indicated it wanted
23 to cross examine for ten minutes on this.

24 Isa, you had originally indicated you
25 wanted to cross examine for ten minutes on Worker

1 Safety.

2 MR. AJLOUNY: Yeah, I wanted to make
3 sure I still have that.

4 HEARING OFFICER VALKOSKY: Okay. I'm
5 just saying you're -- you're retaining your --

6 MR. AJLOUNY: Oh, I'm sorry. Oh, man.
7 I don't need the ten minutes for cross examination
8 if we move it to Hazardous Materials Management.

9 HEARING OFFICER VALKOSKY: Okay.

10 MR. AJLOUNY: I want my ten minutes in
11 that one.

12 HEARING OFFICER VALKOSKY: Cool. I want
13 to try to save as much tax dollar money as we can.

14 How long is your witness going to take
15 on his direct testimony under Haz Mat?

16 MR. AJLOUNY: Twenty-one to 22 hours.

17 Just kidding.

18 (Laughter.)

19 MR. AJLOUNY: I'd say about -- this is
20 new for me, I don't even know what his written
21 testimony is going to be. I mean, we've talked,
22 so -- I've got to say if he just has to say a
23 summary of the written, I would think 10, 15
24 minutes.

25 HEARING OFFICER VALKOSKY: All right.

1 Again, there's -- there's not necessarily a clock
2 ticking. I'm just trying to get an idea on this.

3 MR. AJLOUNY: That's my final answer.

4 (Laughter.)

5 HEARING OFFICER VALKOSKY: Okay. All
6 right. Aside from CURE, does anyone want to cross
7 examine on Worker Safety and Fire Protection
8 again? I see no one. Okay. Or, not CURE, CARE.
9 Strike that.

10 Way too many cases.

11 (Laughter.)

12 HEARING OFFICER VALKOSKY: All right.
13 And -- and, as a bonus for getting through this
14 next topic, I think we'll be prepared to take a
15 brief recess. So that can be an incentive to
16 anyone.

17 The next topic is Noise. Will there be
18 anything new from Applicant? No.

19 Anything new from Staff?

20 MS. WILLIS: Not that I know.

21 HEARING OFFICER VALKOSKY: No. Okay.

22 MS. GRUENEICH: Mr. Valkosky, just -- I
23 wanted to make I understand. When we say that
24 there's nothing new from the Applicant, does that
25 then mean that the Applicant is accepting

1 basically the conditions as set forth in the Staff
2 Assessment?

3 MR. HARRIS: It means there's no new
4 witnesses or -- or timeframe. And we'll prefile
5 our testimony, and that'll be the basis for -- for
6 the direct testimony.

7 MS. GRUENEICH: Okay. What --

8 HEARING OFFICER VALKOSKY: I think the
9 question was will there be a challenge to any of
10 the conditions in the --

11 MS. GRUENEICH: Right. Because in terms
12 of --

13 HEARING OFFICER VALKOSKY: -- Staff
14 Assessment.

15 MS. GRUENEICH: -- of making a decision
16 on cross examination time, it matters drastically
17 whether the Applicant is accepting the conditions
18 or contesting them. And so in this area of Noise,
19 is the Applicant accepting the conditions set
20 forth in the Staff Assessment?

21 MR. HARRIS: I think to the extent we
22 have suggestions for specific language changes for
23 any conditions, that'll be part of the prefilled
24 testimony. So you will see it at that time.

25 MS. GRUENEICH: Well, that wasn't my

1 question. The question was for the Noise
2 conditions, are you -- is the Applicant accepting
3 those conditions, or are they challenging them.

4 MR. HARRIS: I don't have my noise
5 experts to talk specifically about the language,
6 but it will be part of the prefiled testimony.

7 MS. GRUENEICH: Well, I -- in all
8 honesty, we were told to come here prepared, and
9 the Applicant must know by now if you are able to
10 accept the Noise conditions.

11 HEARING OFFICER VALKOSKY: Yeah, I think
12 --

13 MS. GRUENEICH: For us to be able to
14 give any decent decision tonight, we need to know,
15 are you challenging them.

16 HEARING OFFICER VALKOSKY: Yeah, Ms. --
17 Ms. Grueneich, I think -- I think that is a fair
18 question. And Mr. Harris. The -- one of the
19 presumptions that we typically rely upon in the
20 Commission, as you well know, is that for the non-
21 controversial areas, essentially Staff will be
22 accepting, with minor changes, things like that.
23 That's always fair game. The conditions that --
24 that Staff has put out in its public Staff
25 Assessment. And that's typically the way it

1 generally runs.

2 I think Ms. Grueneich's question is
3 appropriate. You know, are there going to be any
4 -- and I would characterize it as major changes,
5 that Applicant would propose to the Noise
6 Conditions of Certification as proposed by Staff?

7 MR. ELLISON: This is Mr. Ellison, for
8 the Applicant.

9 Let me say two things. First of all, we
10 do not expect to make -- to propose any major
11 changes to the Noise topic, nor do we expect to
12 propose any -- any major substantive changes to
13 any of the other topics under Group I.

14 I will say, however, that there may be
15 minor wording changes that we might propose.

16 HEARING OFFICER VALKOSKY: That's
17 understood.

18 MR. ELLISON: That's understood. Let me
19 also say that we're here to talk about the
20 schedule and how much time people need. Ms.
21 Grueneich should be able to, having reviewed the
22 Staff testimony -- having reviewed the evidence I
23 know what her position is on those proposed
24 testimony -- without -- and be able to estimate
25 how much time she needs or whether she wants to

1 put forward a witness. Irrespective of the issue
2 that we're talking about here.

3 HEARING OFFICER VALKOSKY: Well, I think
4 what we come down to, Mr. Ellison, is that -- and
5 I'm hypothesizing -- is that if Applicant is
6 accepting a set of conditions proposed by Staff,
7 and also alleviates the concerns of another
8 Intervenor, that other Intervenor may not have any
9 concerns. If Applicant is, however, in any major
10 way challenging the provisions of those
11 conditions, then that Intervenor could have a
12 concern. And I think that's what we're coming out
13 to. Okay?

14 MR. ELLISON: Yes. Well, I understand
15 that concern, and --

16 HEARING OFFICER VALKOSKY: Yeah.

17 MR. ELLISON: -- and I want to reiterate
18 that with respect to something major or
19 substantive, there are no changes that the
20 Applicant is going to be proposing with respect to
21 these Group I issues.

22 I do want to, though, reiterate that
23 there's an irony here, which is that in terms of
24 the no surprise rule that we've been talking
25 about, and knowing what people's positions are,

1 there is an enormous volume of information about
2 the Applicant's position out there, and we are
3 still waiting, given that our motion to compel was
4 denied, to know essentially anything about what
5 CVRP's positions are on any of these topics.

6 HEARING OFFICER VALKOSKY: And we will
7 be getting to that for the topics in which CVRP
8 has indicated they wish to propose a witness.
9 Okay.

10 MS. LEICHTER: Mr. Valkosky. The sense
11 of irony is somewhat misplaced, given your flip-
12 flop in the letter to San Jose, and your ability
13 to have fluid positions in terms of the
14 requirements stated in that letter before the
15 Council, and have another position before this
16 Commission.

17 In terms -- I would like the Applicant
18 to define minor changes. I take that to mean no
19 substantive or contextual changes to the
20 conditions imposed by the Commission. In other
21 words, clerical errors only.

22 HEARING OFFICER VALKOSKY: Well, again,
23 I brought up my exchanges. As is most -- I mean,
24 that's -- that's probably subjective. But I
25 wouldn't -- I would certainly agree with you

1 insofar as the substantive thrust of a condition.
2 If, however, we're talking about, say a
3 verification, which may change from 30 days to 20
4 days, or to 35 days. I -- I would personally view
5 that as a minor change. You know.

6 I'm not talking about anything that
7 certainly would lead to a -- lead to an
8 environmental impact, or to a -- to a LORS
9 compliance issue. I think once we've crossed
10 those lines, I mean, that's exactly what we've
11 done, we've crossed the lines. And we're talking
12 major substantive changes.

13 MR. WILLIAMS: Mr. Valkosky, Robert
14 Williams. I'd like to point out, and I think
15 Noise is a major substantive issue that intrudes
16 in the LORS. In particular, the City of San Jose
17 in the riparian corridor has a zero noise increase
18 requirement.

19 HEARING OFFICER VALKOSKY: Okay. That's
20 -- and the question right now, Mr. Williams, is do
21 you intend to offer a witness or cross examine on
22 this topic.

23 MR. WILLIAMS: Well, I -- I would -- I
24 would urge that we again reserve the December
25 timeframe for the less controversial issues, and

1 move Noise into the January timeframe.

2 HEARING OFFICER VALKOSKY: Okay. And
3 that's fair.

4 MR. WILLIAMS: I think that would be
5 fair, because I think Noise is one of the first
6 where if the Applicant fails to meet his -- his
7 noise target, we want him to shut down, rather
8 than putz around repairing the plant for two years
9 while he runs, making a lot of noise. And this --
10 this will be -- this is nowhere in the FSA, as I
11 read it right now, and it's -- nowhere is there
12 any indication that he took a different time
13 period for averaging the ambient noise level.

14 So there is a lot of controversy
15 regarding noise.

16 HEARING OFFICER VALKOSKY: Okay.

17 MR. WILLIAMS: And it's one of the
18 disqualifying features in an industrial park
19 that's planned for Campus Industrial. So I urge
20 that you defer it until January.

21 HEARING OFFICER VALKOSKY: Okay. And
22 that's -- and that's perfectly appropriate. And,
23 you know, I thank you for your position --

24 MR. WILLIAMS: Thank you.

25 HEARING OFFICER VALKOSKY: -- on that.

1 Now, do you intend to either offer a
2 witness or perform cross examination on this
3 topic?

4 MR. WILLIAMS: Yes, I certainly do, in
5 January. It might take up to two hours. Because
6 of both LORS --

7 HEARING OFFICER VALKOSKY: Up to two
8 hours?

9 MR. WILLIAMS: -- because of the LORS
10 issue and because of the Certificate of Compliance
11 issue, and because of the feasibility of reducing
12 the noise. There are three separate topics there.

13 HEARING OFFICER VALKOSKY: The
14 feasibility of addressing the noise insofar as the
15 adequacy of the mitigation?

16 MR. WILLIAMS: No. The --

17 HEARING OFFICER VALKOSKY: There will be
18 --

19 MR. WILLIAMS: -- where he proposes to
20 insulate the one house that is close. If he would
21 instead start to muffle the noise coming from the
22 plant --

23 HEARING OFFICER VALKOSKY: I see.

24 MR. WILLIAMS: -- this proposes a number
25 of design features that are required for

1 mitigation.

2 HEARING OFFICER VALKOSKY: Okay. Thank
3 you for that clarification.

4 MR. RICHINS: I'd like to --

5 HEARING OFFICER VALKOSKY: Just a
6 second.

7 MR. RICHINS: Paul Richins, with Staff.

8 Mr. Williams indicates in his filing one
9 hour. Tonight he said two hours.

10 MR. WILLIAMS: Well, it got worse when I
11 started thinking about the CEC part of it.

12 HEARING OFFICER VALKOSKY: We are -- we
13 are -- I would caution everyone, we're only
14 talking estimates right now. You know. You may
15 or may not get what you ask for.

16 MS. WILLIS: Kerry Willis, Staff
17 Counsel.

18 I just wanted to clarify, was that just
19 cross examination or will you be providing a
20 witness, as well?

21 MR. WILLIAMS: In -- in January, I would
22 certainly be prepared to provide a witness.

23 HEARING OFFICER VALKOSKY: Okay. You
24 would? And again, realize that if you're going to
25 provide a witness, you've got to prefile the

1 resume --

2 MR. WILLIAMS: I understand all that.

3 HEARING OFFICER VALKOSKY: Okay. How
4 long for your witness?

5 MR. WILLIAMS: I suppose one hour. And
6 between 30 minutes and one hour. Depending on --
7 on whether the Applicant modifies his position.
8 I'm curious to hear what the City of San Jose has
9 --

10 HEARING OFFICER VALKOSKY: Well, we will
11 -- we will be moving in that direction.

12 Okay. Ms. Cord.

13 MS. CORD: I just want to clarify. We
14 did defer Noise until January, is that what you're
15 saying?

16 HEARING OFFICER VALKOSKY: No, that was
17 the suggestion that's on the table right now.

18 MS. CORD: Okay. And when will that be
19 determined?

20 HEARING OFFICER VALKOSKY: In tomorrow's
21 hearing order, actually.

22 MS. CORD: Okay. Thank you.

23 No, no cross examination.

24 HEARING OFFICER VALKOSKY: Okay.

25 MS. LEICHTER: The City of Morgan Hill

1 would like to reserve ten minutes for cross
2 examination on --

3 HEARING OFFICER VALKOSKY: Thank you.

4 MR. WADE: Jeff Wade. I'd like to have
5 ten minutes on cross examination.

6 MR. SCHOLZ: Seeing that -- this is
7 Scott Scholz. I'd like to reserve ten minutes,
8 but seeing it's quite substantive and how much
9 cross examine there would be, I assume there's
10 going to be a lot of redundancy in what we would
11 do. So I want to reserve the right, but I don't
12 intend to --

13 HEARING OFFICER VALKOSKY: Understood.
14 Understood.

15 Isa.

16 MR. AJLOUNY: Yes. I have a concern in
17 this. Again, because I did not receive the
18 Prehearing Statement document from the Staff, and
19 I think when you find out that I was omitted from
20 that list, or never put on that list, you'll see
21 that it's true, because I'm not here to mislead
22 anybody.

23 I find it surprising, and I wish I knew
24 the guy's name. I see Staff, and it says Rosen
25 and Baker, for the witness. And I know this guy.

1 I'll just say he has a heavy accent. I think his
2 name starts with a K. Okay.

3 MR. RICHINS: Kisabuli.

4 MR. AJLOUNY: What?

5 HEARING OFFICER VALKOSKY: Okay, let's
6 keep all comments directed where you can pick them
7 up for the recording, okay?

8 MR. AJLOUNY: Okay. Well, I guess I
9 didn't know who it was, but he's the one that was
10 -- okay. First of all, noise has always been a
11 concern of mine.

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. AJLOUNY: And I've been very
14 involved with the noise and working and asking
15 questions. And he was the one that did the PSA,
16 and I find it shocking that he's not even a
17 witness, because I have a lot of questions on his
18 first initial --

19 HEARING OFFICER VALKOSKY: Okay. Is --
20 is -- did Kisabuli do the Noise analysis on the
21 Staff Assessment?

22 MS. WILLIS: Mr. Kisabuli did the
23 Preliminary -- worked on the Preliminary Staff
24 Assessment. But Alan Rosen is our witness that
25 prepared the Final Staff Assessment, which is our

1 testimony. Mr. Baker -- Mr. Rosen is a
2 consultant, and Mr. Baker is the Staff person who
3 is, I guess, basically in charge of making sure
4 that testimony gets in the record.

5 MR. AJLOUNY: Well -- well, Mr.
6 Valkosky, I mean, I'm trying to make this smooth
7 and easy. I need to know what your position is.
8 I feel very strong, I've been very involved, many
9 conversations, trying to find out about noise.
10 And I have a big concern of Mr. K, I'll say, not
11 being the witness.

12 Now, I'll just --

13 HEARING OFFICER VALKOSKY: Why is that?

14 MR. AJLOUNY: Because I was involved in
15 -- I remember even at a workshop asking him
16 questions about the timing of when you do a --
17 when you do the analysis, and, you know, what
18 things are -- what kind of mitigation. And -- and
19 --

20 HEARING OFFICER VALKOSKY: What kind of
21 mitigation --

22 MR. AJLOUNY: -- and other --

23 HEARING OFFICER VALKOSKY: And -- and
24 has any of that changed between the Preliminary
25 Staff Assessment and the Final Staff Assessment?

1 MR. AJLOUNY: Well, I think the fact
2 that when I was in conversation trying to get the
3 facts, I didn't find out that he wasn't part of
4 the FSA. And I guess I can say it, he didn't know
5 about it, either, until the FSA was just about
6 out. He wasn't even told by his own management
7 team.

8 I have a problem with that. And I'll
9 make a motion for him to be a witness, because I
10 have big concerns about the process and the public
11 participation.

12 HEARING OFFICER VALKOSKY: Okay. We'll
13 take that under consideration.

14 CVRP. You indicated you may put a
15 witness on.

16 MS. GRUENEICH: No, we won't, and we
17 would reserve 15 minutes, at least.

18 HEARING OFFICER VALKOSKY: Fifteen
19 minutes for cross?

20 MS. GRUENEICH: Yes.

21 HEARING OFFICER VALKOSKY: Okay.

22 Ms. Prevetti, you indicated the City may
23 desire to put a witness on.

24 MS. PREVETTI: Yes, and we would like to
25 continue to reserve that right. The witness would

1 be Deputy Director of Planning Kent Edens, E-d-e-
2 n-s. And an estimated time of 15 minutes.

3 HEARING OFFICER VALKOSKY: Okay.

4 MS. PREVETTI: And if it can be moved to
5 Group II, we -- we concur with that.

6 HEARING OFFICER VALKOSKY: You would
7 prefer that it be placed in Group II.

8 MS. PREVETTI: Yes, please.

9 HEARING OFFICER VALKOSKY: Okay. Well,
10 will you be cross examining on that?

11 MS. PREVETTI: Yes, we would like to
12 reserve 15 minutes, please.

13 HEARING OFFICER VALKOSKY: For cross.
14 Okay.

15 MS. PREVETTI: Yes. Thank you.

16 MR. SCHOLZ: Mr. Valkosky, we didn't
17 indicate how many of the group here wanted to move
18 that to Group II, at least. Do you need any
19 additional support on whether or not we would all
20 desire to have it to Group II or not?

21 HEARING OFFICER VALKOSKY: Yeah. The
22 Committee certainly is going to consider that, in
23 light of the full schedule. But -- yeah, I see
24 nothing wrong with kind of taking a straw poll at
25 this time.

1 Who is in favor of putting Noise in
2 Group II? Just raise your hand.

3 Okay. The overwhelming majority is in
4 favor of putting it in Group II. The Committee
5 will consider this in light of the other
6 scheduling considerations.

7 At the -- okay. Almost done with Group
8 I, folks.

9 Just a couple other general statements.
10 At the December hearings, I know the issue of the
11 old Commission approach to, in quote, need, has
12 been brought up. And I'd like to indicate that at
13 -- at this time it is my intention that that be
14 addressed only by statements of counsel, as is
15 contained in the -- the Staff Assessment. I
16 believe it's fairly clear that the law has
17 changed, and so we have other things. The
18 traditional need analysis that the Commission did
19 at one time. Okay.

20 Just -- just to sum up. Are there any
21 -- yeah.

22 MS. WILLIS: Kerry Willis, Staff
23 Counsel. We just wanted to reserve some cross
24 examination time for the Noise. And since we
25 haven't seen any other testimony, I can't give you

1 an estimate. But I wouldn't imagine it would be
2 lengthy.

3 HEARING OFFICER VALKOSKY: By lengthy,
4 is 20 or 30 minutes?

5 MS. WILLIS: Somewhere around there.

6 HEARING OFFICER VALKOSKY: All right.
7 Understood.

8 Mr. Murphy, you had --

9 MR. MURPHY: Yes, sir. Mike Murphy.
10 I've heard explanations about how need will be
11 addressed as a concern of the Commission, separate
12 from how it used to be.

13 So my question is, can I ask you to
14 clarify how will the question of need be addressed
15 this time?

16 HEARING OFFICER VALKOSKY: Under --
17 under the law as it stands, as it exists today,
18 there is no need test. That is my understanding.

19 Previously, the Energy Commission would
20 perform an assessment of the statewide electricity
21 demand and the available supplies, come up with
22 various numbers for the various service areas in
23 the state, and power plants filling those numbers
24 were needed, in the sense that we're talking
25 about.

1 The legislature changed that a couple of
2 years ago.

3 MR. MURPHY: I understand that. But --
4 go ahead.

5 HEARING OFFICER VALKOSKY: Why don't you
6 just give me a second.

7 MR. MURPHY: Sure. Go ahead.

8 HEARING OFFICER VALKOSKY: Yeah. Now,
9 and again, I -- I hesitate to use the word need,
10 because -- because those of us that have been in
11 this system for a while have a lot of baggage that
12 goes with it. You know, I mean, it connotes
13 certain things.

14 Now, fundamentally, at least -- at least
15 my understanding of the statute is that the thrust
16 is -- is toward what the California Independent
17 System Operator does, which is performing the --
18 or preserving the reliability of the system. You
19 know. And by reliability, you know, regardless of
20 -- of, you know, what you think about the Cal-ISO,
21 that is their charge under -- under the statute.

22 As I'm sure you're all well aware, they
23 have come out with certain positions, which we'll
24 examine in the context of this case, about
25 generation needed to meet the load, meet the load

1 in a -- in a certain center preserve,
2 transmission, reliability, things like that. I
3 mean, that's -- that's things that we will -- we
4 will get to later.

5 MR. MURPHY: Transmission system and
6 LSE?

7 HEARING OFFICER VALKOSKY: Yeah. Yeah,
8 that's -- that's fundamentally where that concept
9 I think comes in. And again, I'm just trying to
10 make that distinction between what we used to do,
11 which is, you know, still kind of hanging around,
12 and what we do now.

13 Ms. Grueneich.

14 MS. GRUENEICH: The only comment that I
15 would add to that is that with the City Council's
16 action of this week, we now have a fundamentally
17 additional area in this case that we weren't sure
18 we had before, that in some ways does address that
19 -- that under the Warren-Alquist Act, Section
20 25525. One of the determinations that will need
21 to be made in this case, if this project were to
22 be approved, is that the facility is required for
23 public convenience and necessity, and that there
24 are not more prudent and feasible means of
25 achieving such public convenience and necessity.

1 And I'm sure in the coming months we'll all have
2 many hours of discussion as to what that -- that
3 means.

4 HEARING OFFICER VALKOSKY: Right.
5 Agreed.

6 MS. GRUENEICH: But --

7 HEARING OFFICER VALKOSKY: One of the --
8 one of the factors under 25525 is electric system
9 reliability. One of the -- the three major
10 factors that are mentioned by the legislature for
11 consideration.

12 But again, it's -- just we've got to
13 preserve that distinction. I know it's difficult.
14 I'm not even sure it makes a lot of sense,
15 sometimes, but it's there.

16 Mr. Williams.

17 MR. WILLIAMS: I make a request that
18 following the break, we discuss briefly the timing
19 and the sequencing of these three meetings, and
20 particularly --

21 HEARING OFFICER VALKOSKY: Well, I'm
22 going to try to wrap up this -- this first one
23 right now, Mr. Williams. The timing and the
24 sequencing, that's just where I was going. Okay,
25 on the groups here.

1 MR. WILLIAMS: All right. Thank you,
2 sir.

3 HEARING OFFICER VALKOSKY: Okay. Yeah.
4 As I started off saying. Given the fact that
5 there is -- assuming, assuming that Noise is put
6 into Group II, to my understanding there would be
7 no new testimony submitted, or no major
8 significant changes submitted on the other topics
9 appearing under Group I. Most of the -- and Isa,
10 putting your witness under Haz Mat. Okay. And
11 that most of the interest would be in relatively
12 limited cross examination.

13 With -- with that understanding, and
14 subject to check, is there any strong objection to
15 hearing these on December 13th and/or 14th?

16 I believe it's a Wednesday and Thursday.

17 Just a minute, Isa.

18 Okay, I see no objection. Isa.

19 MR. AJLOUNY: Yes. You asked me a
20 question, because this is, you know, it's
21 overwhelming for me. You asked me a question
22 about Noise, and if there's any difference between
23 the PSA and the FSA. And the answer is certainly
24 yes.

25 So I -- and the other point I want to

1 make, again, I did not know anything about who the
2 witnesses are from the Staff. And if I would've
3 known this person was omitted, I would've done a
4 motion. So I -- I --

5 HEARING OFFICER VALKOSKY: Isa, the
6 witnesses were identified in the Staff Assessment,
7 which has been out -- Staff witnesses were
8 identified --

9 MR. AJLOUNY: I understand, Mr.
10 Valkosky, and he was on there. And now he isn't.
11 Yes, he was. On the FSA. I've looked. And I'll
12 go home and get it.

13 HEARING OFFICER VALKOSKY: Okay. Well,
14 again, we're going to consider that matter, and
15 again, I'm trying to --

16 MR. AJLOUNY: Right here.

17 HEARING OFFICER VALKOSKY: -- I'm trying
18 to achieve some -- could we -- could we just --
19 okay.

20 I understand your position on Noise.
21 You would like Staff to provide Mr. Kisabuli as a
22 witness on Noise. Is that correct?

23 MR. AJLOUNY: Yes. And I guess what I'm
24 saying is if I don't get a good warm fuzzy from
25 you tonight, I'm going to have a major concern,

1 because I didn't have time to be publicly informed
2 and do the proper motion, and stuff like that.
3 And, again, I'm not -- I just feel strong about
4 that. And I didn't -- I don't know, like you said
5 you'd make the decision tomorrow, and I don't know
6 if you can make decisions like that now. I just
7 don't know --

8 HEARING OFFICER VALKOSKY: No. I said,
9 I believe I said, or I certainly should have said,
10 that the Commission -- well, the Committee will
11 consider your request for Mr. Kisabuli.

12 What I am trying to do now is see if
13 there are any objections, with the exception of
14 Noise, to having hearings on the other topics on
15 December 13th and 14th. That's what I started off
16 at.

17 MR. AJLOUNY: I strongly object. Like I
18 said in my previous statement.

19 HEARING OFFICER VALKOSKY: Okay, fine.
20 That's fine. That's fine.

21 Mr. Williams.

22 MR. WILLIAMS: I'll briefly comment on
23 page 2 of my somewhat delinquent submittal of
24 today.

25 Now is the time for statesmanship on the

1 part of the Applicant, the CEC, and the
2 Intervenors. I think we should all take a deep
3 breath and allow the summit that the Mayor of San
4 Jose has proposed to consider a regional siting
5 approach. Everyone's interest would best be
6 served by taking a deep breath, taking a step
7 back, not threatening referenda to license the
8 power plant, not threatening overrides of local
9 ordinances and regulations, and instead giving the
10 Mayor's proposal for a power summit time to
11 operate.

12 I think everybody would be better
13 advised, and there is plenty of work for the Staff
14 to do over the Christmas holidays that would
15 result in major savings.

16 Now, I --

17 HEARING OFFICER VALKOSKY: I take it
18 that means you don't want to go to hearings --

19 MR. WILLIAMS: I don't want to go to
20 hearings until we --

21 HEARING OFFICER VALKOSKY: Fine. Really
22 -- really, that's -- that's all the Committee
23 really is interested in here.

24 Ms. Cord.

25 MS. CORD: Elizabeth Cord, for Santa

1 Teresa Citizen Action Group. And no, both -- both
2 the timeliness and the particular time of year.
3 We're all parents. This is a family neighborhood.
4 It's not a good time.

5 HEARING OFFICER VALKOSKY: Okay.

6 Please, wait your turn. I'm sorry.

7 MS. LEICHTER: I just would like to note
8 an objection for the record to the -- I find it
9 quite extraordinary, having been through many
10 types of due process types of hearings in which
11 due process certainly -- principles do apply, that
12 we would be having a Prehearing Conference at
13 which we are informed that testimony, resumes and
14 exhibits are due in seven days. And the hearings
15 commence in 13, given the magnitude of these
16 topics.

17 Even though I understand that you have
18 attempted to segregate the topics upon which there
19 is little or no controversy, I find that rather
20 extraordinary, and I'm lodging an objection for
21 the record on the basis of --

22 HEARING OFFICER VALKOSKY: Well, I think
23 I would have some real questions about your
24 objection, since the only people that would be
25 submitting testimony on these topics are Applicant

1 and Staff. There is no other party that would be
2 submitting any evidence, any testimony.

3 Staff's testimony has been public since
4 October 10th.

5 MS. LEICHTER: And are you telling me on
6 December 7th, that what they are submitting are
7 simply affidavits reaffirming their prior
8 testimony? I understood that to apply only to the
9 declaration process.

10 HEARING OFFICER VALKOSKY: No. A
11 witness --

12 MS. LEICHTER: Will we be getting --

13 HEARING OFFICER VALKOSKY: -- actually
14 be the same testimony. Yes. They would be
15 affirming their existing testimony.

16 MS. LEICHTER: So there will be no new
17 material in what we --

18 HEARING OFFICER VALKOSKY: I believe we
19 clarified that on every topic so far.

20 MS. LEICHTER: I'm sorry, sir. I
21 thought you only clarified that in respect to the
22 written declarations, not in terms of the written
23 testimony.

24 HEARING OFFICER VALKOSKY: No. Then I'm
25 sorry for the misunderstanding.

1 There would be no new information on
2 these topics submitted by Applicant, no new
3 substantive information. I mean, there can be
4 typographical errors, things like that.

5 MS. LEICHTER: And the exhibits?

6 HEARING OFFICER VALKOSKY: And the
7 exhibits have been identified. Staff has
8 identified the Staff Assessment as its exhibit.
9 Applicant's Prehearing Conference Statement
10 contains extensive references not only to the AFC
11 document, but to other material which it has filed
12 and which it intends to rely upon.

13 As I stated at the beginning of this
14 session, with the exception of the AFC document,
15 the Applicant would be -- or any other party, I'm
16 just saying Applicant because they're the ones
17 that proposed it -- would re-file their exhibits,
18 which are largely data -- data responses and
19 things like that, so that there is no confusion.

20 MS. LEICHTER: May I ask what the normal
21 time process would be from the Prehearing
22 Conference to the first hearing? Have you ever
23 had a two week --

24 HEARING OFFICER VALKOSKY: Yes, several
25 times. Yes. For -- for areas which are not

1 disputed. I'm not talking about that time process
2 for the disputed areas.

3 CHAIRMAN KEESE: I would suggest that --

4 MS. LEICHTER: Sir, you have submitted
5 -- you have extensive cross examination requests.
6 How can you contend that those areas are not
7 disputed?

8 CHAIRMAN KEESE: I'll answer your
9 question, the first question, which was what is
10 the typical procedure. The typical procedure is
11 that about as many issues as show up on the first
12 page would be stipulated to, and -- and just not
13 handled at all. I mean, handled by stipulations
14 submitted, and you're done.

15 I would imagine, as we get through this,
16 that -- that some of this cross examination will
17 prove to be redundant. I'll use Noise here, where
18 we have ten parties suggesting that they'd like
19 time for cross examination, which is very
20 appropriate to be listed. But I'm not sure the
21 tenth person is going to want to answer -- ask the
22 question that nine people have asked. So that if
23 it will -- that's why we're moving -- we're moving
24 Noise down.

25 But on most of these other issues,

1 typically they're -- the record is there, both
2 parties have submitted, that's it.

3 MS. LEICHTER: I understand, sir. What
4 you've stated, as I understand it, is that mostly
5 this is done by stipulation because these are not
6 -- non-controversial topics. In this case, and
7 I'm sure we're all going to try to avoid redundant
8 cross examination, you still have extensive
9 requests for any cross examination, and that is
10 the point I wish to make for the record.

11 HEARING OFFICER VALKOSKY: That's right.
12 And what we've determined is, in light of that
13 cross examination, we will have witnesses appear
14 on these topics so that the parties can perform
15 that cross examination. That does not require the
16 filing of new testimony by any of the parties. It
17 only requires essentially an identification of
18 what's going to be done by the Applicant and by
19 the Staff.

20 Okay. Thank you.

21 MS. LEICHTER: If I may, sir, I
22 understand, sir. That only went to my point about
23 the two week time notification and whether that
24 was typical in these Commission proceedings. And
25 what I'm hearing is this is not typical.

1 HEARING OFFICER VALKOSKY: No, I
2 wouldn't characterize it as that. I wouldn't
3 characterize it as a typical. Okay.

4 Mr. Wade.

5 MR. WADE: Thank you. I would prefer to
6 have the hearings, all the hearings scheduled
7 after the end of December. Thank you.

8 HEARING OFFICER VALKOSKY: Okay. Mr.
9 Scholz.

10 MR. SCHOLZ: I would also request that
11 the Evidentiary Hearings, even these less
12 controversial topics, begin after the first of the
13 year. I know my participation in Group I, I've
14 committed myself to some substantial timeframes
15 that I have to prepare for.

16 HEARING OFFICER VALKOSKY: Okay.

17 MR. SCHOLZ: And I promised my wife that
18 I'm going to be giving full devotion to my family
19 in December. I promised that before I even came
20 tonight, because she wouldn't really prepare to
21 send me here tonight.

22 And, finally, more of a technical
23 reason, if you need one, to support our position,
24 is it's my understanding that this is a milestone,
25 when you decide to start the Evidentiary Hearings,

1 that anybody who wishes to be an Intervenor -- and
2 I know you'd love to close Intervenor joining
3 this process, but I think you say 30 days prior to
4 Evidentiary Hearings beginning --

5 HEARING OFFICER VALKOSKY: Or at such
6 other time as the Committee determined, which was
7 tonight.

8 MR. SCHOLZ: Oh, I missed that in the --
9 in the --

10 HEARING OFFICER VALKOSKY: It was in the
11 -- the Notice of the Prehearing Conference.

12 MR. SCHOLZ: Okay. I misunderstood
13 that. I thought you give them 30 days prior to
14 that date.

15 And, finally, I know several parties to
16 this case suggested a schedule. And it appears
17 that those suggestions weren't utilized in your
18 proposed scheduling. And coming here tonight at
19 6:00 o'clock promptly, I find that you're planning
20 to do this December 13th and 14th. So --

21 HEARING OFFICER VALKOSKY: No. As --

22 MR. SCHOLZ: -- we're not --

23 HEARING OFFICER VALKOSKY: -- as I said,
24 these are tentative dates.

25 MR. SCHOLZ: I understand that. And I'm

1 --

2 HEARING OFFICER VALKOSKY: Tentative.

3 MR. SCHOLZ: -- hopefully they're very
4 tentative, and they'll -- they'll be moved to
5 January 2nd.

6 HEARING OFFICER VALKOSKY: Okay. No,
7 that's -- and that's fair.

8 MR. SCHOLZ: Thank you.

9 HEARING OFFICER VALKOSKY: That's fair.
10 Thank you.

11 MR. AJLOUNY: Mr. Valkosky, I'm going to
12 try to talk slowly and calmly, because I'm really,
13 really concerned that you would even come out with
14 a tentative plan and totally ignore the stress
15 that this community has come out with in this past
16 year and a half that we've been dealing with this.

17 I -- I do say that the -- all of the
18 stress and concerns in this community has brought
19 us closer, so I thank Calpine for that, because I
20 feel like we have become a nice, close community
21 because of the -- the problems we've had in this
22 area.

23 But we take this very seriously. I
24 mean, and I think everyone kind of knows that
25 here. But please understand that the City Council

1 vote a few days ago was so intensely -- an intense
2 concern of many that we took vacation time, we
3 lost sleep, we spent hours to get the facts to the
4 City Council, because they wanted to make a wise
5 decision. And we didn't have the millions of
6 dollars in PR, in advertising, to convince people
7 that we're going to have more blackouts, even in
8 the winter, now, and all these kind of things that
9 were going on.

10 So we timed out, we got permission from
11 our families so our wives and our husbands won't
12 divorce us. I mean, this is a real concern. And
13 I think one of these areas, I can't remember
14 whether it's -- whatever the area is, the quality
15 of life, what's affecting it when the plant's
16 here. Well, I -- I hope you take in consideration
17 what our life is by going through the process.

18 Please have some consideration for our
19 community. And -- and the only reason I'm real
20 concerned is because your tentative plan totally
21 ignored my whining and crying and writing in
22 public. I mean, so I have to do it here again.
23 I'm just real concerned, Stan.

24 Thank you very much.

25 HEARING OFFICER VALKOSKY: Okay, Isa.

1 Thank you.

2 John.

3 MR. WIKTOROWICZ: Yeah. My position on
4 the Prehearing schedule is a matter of record. In
5 my Prehearing Conference Statement I requested
6 that the meetings not begin until the mid-January,
7 because of my travel requirements.

8 HEARING OFFICER VALKOSKY: Okay. Now, I
9 interpreted -- this is the Rancho Santa Teresa --

10 MR. WIKTOROWICZ: I'm sorry. John
11 Wiktorowicz, Rancho Santa Teresa.

12 HEARING OFFICER VALKOSKY: Yeah, I
13 interpreted that on the areas that you were
14 interested in.

15 MR. WIKTOROWICZ: Sir, I'm interested in
16 all areas.

17 HEARING OFFICER VALKOSKY: Okay. That
18 was -- that was my misinterpretation, then.

19 MR. WIKTOROWICZ: Thank you.

20 HEARING OFFICER VALKOSKY: Okay.

21 Dian.

22 MS. GRUENEICH: Dian Grueneich. We have
23 not reserved time to cross examine, so we can go
24 with the schedule either way, whether it proceeds
25 now or proceeds in January.

1 HEARING OFFICER VALKOSKY: Okay. Thank
2 you.

3 Laurel.

4 MS. PREVETTI: We have no comment on
5 when you hear the Group I items.

6 HEARING OFFICER VALKOSKY: Okay.

7 Mr. Murphy.

8 MR. MURPHY: Mike Murphy.

9 As I said before, I think Christmas
10 vacation time is inappropriate. Also, the amount
11 of time we have to prepare is inappropriate. It
12 may have been out since October, but we've been
13 doing other things in the meantime, so I haven't
14 been poring over the stuff that we want to be
15 looking at in 13 days.

16 So I request strongly that you put off
17 the start until January. Thank you.

18 CHAIRMAN KEESE: Let me -- I'd like to
19 ask a generic question of everyone, because
20 scheduling is obviously a concern. I know
21 Commissioner Laurie has, I believe, seven siting
22 cases that he has to work around. And I have
23 about the same.

24 It looks to me like we could be talking
25 about seven to ten days of testimony here. Is

1 that -- I'm just looking at all three groups. And
2 I'm wondering if it would be better to just block
3 off two weeks and go every day until we're done,
4 or -- because I know our goal here -- our goal was
5 to try to spread it out and do a couple days in
6 December, couple days in January.

7 Is it -- is it better to spread it out,
8 or is it better just for us to block off time and
9 just go straight? That's a question.

10 MS. GRUENEICH: Let me just say --

11 HEARING OFFICER VALKOSKY: Okay.

12 MS. GRUENEICH: -- we really feel
13 strongly with going with the approach that has
14 been set forward, for a couple of reasons. One is
15 that I think it really does -- not all issues are
16 equal in siting a power plant. And to some
17 extent, it can get mushed together a little bit
18 where you start to lose what are really the key
19 issues.

20 And I think by -- this is a very well
21 considered schedule that allows all parties, no
22 matter what their views are on the power plant,
23 time to really prepare the testimony in that last
24 group, which are the -- the major issues. Not to
25 say that the second group isn't important, but I

1 think it is -- it requires some time, and it's not
2 all the same time.

3 The second thing is, is that I've done
4 hearings where you go straight through, and I
5 think that the quality of participation in the
6 hearings frankly suffers. That just in terms of
7 making sure that you've, you know, done adequate
8 preparation of your cross examination, and that
9 you've had time so you're not overlapping and
10 duplicating with other people. When you kind of
11 run all the issues together, that sort of
12 preparation time suffers.

13 So our request would be to continue with
14 the staggered approach.

15 HEARING OFFICER VALKOSKY: Thank you.

16 Let's -- let's just go around the table,
17 okay?

18 MR. WILLIAMS: Robert Williams. Let me
19 direct you to the second to the last page of my
20 Supplemental Prehearing Conference Statement. In
21 the next month there are six work items that could
22 be appropriately accomplished before the first --
23 first Evidentiary Hearing. That would be complete
24 the response to data requests, the CEC update, the
25 Staff Analysis in areas that were alluded to and

1 almost promised in the workshop October 31. To
2 complete a workshop on the source test data, which
3 arrived on only November 20th. And it seems to
4 have some very deserving information about the gas
5 turbine exhaust.

6 To the best of my knowledge, the Fish
7 and Wildlife information has not come in yet. I
8 think we need to address how --

9 HEARING OFFICER VALKOSKY: Mr. Williams
10 --

11 MR. WILLIAMS: -- okay. So there's --

12 HEARING OFFICER VALKOSKY: -- Mr.
13 Williams, we're going to get to those things,
14 okay? Each of those items.

15 I think the -- the question on the table
16 that the Chairman posed, and that Ms. Grueneich
17 addressed, was the desirability about having
18 staggered hearings or just having everything in a
19 block.

20 MR. WILLIAMS: Yes, sir. I -- I prefer
21 staggered reasons, for the reasons that Mr. -- Ms.
22 Grueneich stated.

23 HEARING OFFICER VALKOSKY: Okay, fine.

24 MR. WILLIAMS: And I prefer that they
25 start in January so that more good Staff work can

1 be done.

2 And again, I strongly reiterate that we
3 have one activity that I've heard no one talk
4 about yet, which is the need to have some type of
5 environmental mediation to deal with the Mayor's
6 proposal for a power summit. We are -- we are
7 just marching for a confrontation by ramming ahead
8 on this project. So I urge that you add that
9 milestone to your list.

10 HEARING OFFICER VALKOSKY: Thank you.

11 Ms. Cord.

12 MS. CORD: I would agree with the prior
13 two statements that staggering the topics is a
14 better approach. And, again, the December
15 timeframe isn't workable in a family community,
16 January being more appropriate.

17 Thank you.

18 HEARING OFFICER VALKOSKY: Fine.

19 MS. LEICHTER: The City of Morgan Hill
20 would also support the staggered timeframe.
21 Having been through one and two-week
22 administrative hearings, everybody tends to grate
23 on each other's nerves after about the fourth day,
24 unduly.

25 I would also ask the Commission to

1 reflect upon the amount of civilian time that went
2 into this, to reiterate that, that I think it's a
3 rather unusual process. I am here at the
4 direction of my council, and am available on the
5 13th and 14th, but the civilian participants in
6 this process don't always have that luxury, let
7 alone the time away from their families.

8 HEARING OFFICER VALKOSKY: Thank you.

9 Mr. Wade.

10 MR. WADE: Jeff Wade. I have a question
11 before I answer your question, and that is, are
12 these Evidentiary Hearings expected to occur
13 during the day, or in the evening hours?

14 HEARING OFFICER VALKOSKY: And the
15 answer to that is it depends how long each of the
16 topics -- how long I estimate each of the topics
17 to take. If we -- we typically have four hours
18 for an evening hearing. I mean, that's, you know,
19 sometimes you can go a little later. And if we've
20 got a topic that takes an hour, okay, that's four
21 or five topics. If there's a lot of public
22 interest in those things, I'd be more than -- more
23 than willing to accommodate those in the evening,
24 to the extent possible.

25 However, as we'll hopefully get to later

1 tonight, some of these topics, such as
2 Transmission, probably, or in Public Health, are
3 probably going to take two or three days per
4 topic. It is just impossible, not practical, to
5 have all of those heard in the evening.

6 And, you know, so -- so that's the
7 answer. It's the best answer I can come up with
8 right now.

9 MR. WADE: Okay. I understand that --

10 HEARING OFFICER VALKOSKY: Yeah.

11 MR. WADE: -- the constraints, and I
12 sympathize with -- with your difficulty in
13 scheduling.

14 I would, for the record, mention that I
15 would prefer to have the -- as many hearings
16 scheduled in the evening hours as possible. And I
17 hope you understand that.

18 HEARING OFFICER VALKOSKY: No, I think
19 -- yeah, the Committee understands that. And
20 again, it's just some of the things you just can't
21 do unless you want to tie up every evening from
22 January to next September. I mean, that's just
23 not going to work.

24 MR. WADE: Okay. And I understand that.

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. WADE: Let me -- let me answer your
2 question, then. Staggered is -- is my preference
3 for the schedule.

4 HEARING OFFICER VALKOSKY: Okay. Thank
5 you.

6 Mr. Scholz.

7 MR. SCHOLZ: I can't say I'm surprised
8 by your response to Mr. Wade's question. Will
9 they be at least locally? I mean, I think that's
10 an open issue right now, that the Staff threw out
11 that they would like to have them in Sacramento.
12 So --

13 HEARING OFFICER VALKOSKY: My -- my
14 understanding of the Committee's intentions, and
15 they can check, is that we will either -- yes, I
16 mean, they will be -- I don't know how you're
17 defining locally. I'm defining it like the City
18 of San Jose as locally. You know, will they --
19 will they be here in this room?

20 MR. SCHOLZ: That -- no, that's fine.

21 HEARING OFFICER VALKOSKY: Yeah, will
22 they be in San Jose? Yeah.

23 MR. SCHOLZ: Okay. I would definitely
24 -- I would love to be able to just go through this
25 as a block, if it is possible. But I don't -- I

1 just don't think I can do it. You know, as
2 someone who's claimed to have been to every
3 meeting, I don't know if I can keep that up, you
4 know, anymore. I've got to pick and choose now,
5 and, you know, the participation from the public
6 has really suffered.

7 I know we got hammered as a community,
8 like we didn't care anymore, because we couldn't
9 attend Paul's 50 hours of workshops. But I know
10 the community does care, and even the Intervenors
11 care, but they just can't do every one, and we
12 wanted to be able to to every one.

13 So to the best of your ability to
14 accommodate the civilian public out here that --

15 HEARING OFFICER VALKOSKY: Oh, I --

16 MR. SCHOLZ: -- take time off in order
17 to participate in the process --

18 HEARING OFFICER VALKOSKY: -- that's
19 understood.

20 MR. SCHOLZ: -- I would appreciate.

21 HEARING OFFICER VALKOSKY: And, again,
22 you have to realize that it does work both ways.
23 You just can't have, as I said, everything done in
24 the evening, you know. Yeah, you can have
25 everything done locally, but everything just can't

1 be done in the evening.

2 MR. SCHOLZ: I mean, trying to be
3 reasonable to the Chairman's question, can we
4 somehow work to -- I mean, what we asked before
5 when we were doing this more informally was -- I
6 don't know. To let us participate in the
7 scheduling, you know. Let's see if there's
8 conflicts, you know. But we didn't really get a
9 chance to participate in the schedule. You know,
10 we always have to whine after the fact, the
11 schedule came out.

12 Maybe if there's enough people that can
13 compromise, that we can do a mid-afternoon to late
14 evening instead of, you know -- give us an
15 opportunity to go to our jobs and do our work, and
16 then, you know, maybe take part of the day, or,
17 you know --

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. SCHOLZ: -- you see where I'm going.

20 HEARING OFFICER VALKOSKY: I understand.

21 I understand. Yeah, it doesn't have to start at
22 10:00. It could start at 2:00.

23 MR. SCHOLZ: If we want to do an eight
24 hour session, let's try and accommodate --

25 HEARING OFFICER VALKOSKY: No, I

1 understand. So, but -- but again, to the block as
2 opposed to the staggered question --

3 MR. SCHOLZ: I think I would prefer
4 staggered, just for -- if you need to compress the
5 timeframe that you're staggering these over, maybe
6 that would work. But, I mean --

7 HEARING OFFICER VALKOSKY: Fine.

8 MR. SCHOLZ: -- just give us a chance to
9 --

10 HEARING OFFICER VALKOSKY: And really, I
11 -- you know, we've only got about another hour and
12 a half, we've still got two pages of topics, so --

13 MR. AJLOUNY: It's just going to take me
14 an hour and a half to respond to that question,
15 that's all.

16 (Laughter.)

17 MR. AJLOUNY: This is Isa. My answer is
18 staggered, but I want to emphasize the statement
19 that the Mayor said, and I think we might -- might
20 have missed that. But he said he'd do anything to
21 help out with welcoming this whole process.

22 So with that in mind, we might look at
23 starting at 4:00 or 5:00, and we won't have to be
24 in the requirement of leaving at 10:00. I mean,
25 we just went through the City Council Chambers,

1 and --

2 HEARING OFFICER VALKOSKY: Well --

3 MR. AJLOUNY: -- so what I'm trying to
4 say is we can start at 5:00 and go, you know, five
5 or eight hours, and if we have a late night, so be
6 it. But I just -- trying to recommend it
7 staggering, try to do the evenings, and try to
8 work with the Mayor, and maybe even, you know, use
9 some rooms that we don't have to be a time limit,
10 be out by 10:00.

11 HEARING OFFICER VALKOSKY: And -- and
12 that is a possibility that we're looking into.

13 MR. AJLOUNY: And then one last thing --

14 HEARING OFFICER VALKOSKY: No doubt
15 about it.

16 MR. AJLOUNY: -- a little curve ball. I
17 just --

18 HEARING OFFICER VALKOSKY: No, really --

19 MR. AJLOUNY: -- I just --

20 HEARING OFFICER VALKOSKY: -- we've got
21 to move --

22 MR. AJLOUNY: Mr. Valkosky. I am not
23 going to do two straight weeks. I appreciate --

24 (Laughter.)

25 MR. AJLOUNY: -- my colleague's

1 proposal. I'm not going to do it.

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. AJLOUNY: I can't do it. I don't
4 think it's a good idea, for -- for this kind of
5 presentation. It can't be done.

6 PRESIDING MEMBER LAURIE: Just a minute.
7 As to the timing, we fully respect, we fully
8 understand what your commitments are. We will
9 abide by your needs to the best we can. If it
10 means a late afternoon plus evening, if it means
11 picking out the most non-controversial items and
12 making them during the day, all of that. We will
13 do it to the best of our ability.

14 We do have to have balance, we do have a
15 legal obligation to get it done. And we will.
16 But we fully respect the public's right to
17 participate, and we will accommodate to the best
18 that we can. I'm not sure we need any additional
19 comment on it.

20 Mr. Valkosky.

21 HEARING OFFICER VALKOSKY: Smart move.

22 MR. WIKTOROWICZ: You do need to know
23 what our feelings are in order to accommodate
24 them. So --

25 PRESIDING MEMBER LAURIE: Well, sure, I

1 understand.

2 MR. WIKTOROWICZ: -- I would like to
3 share -- I would like to share my feeling. And my
4 feeling is that I would -- I would reiterate the
5 start in the mid-June -- January, sorry --

6 (Laughter.)

7 MR. WIKTOROWICZ: -- June's okay.
8 Staggered, of course. And keeping the consecutive
9 hours that might extend above four, to a minimum.
10 Those would be my wishes.

11 HEARING OFFICER VALKOSKY: Okay. Thank
12 you.

13 We've heard from CVRP. The city, I
14 assume, will accommodate --

15 MR. MURPHY: Mike Murphy, similar
16 response, as long as it starts after Christmas
17 vacation. And you might even consider weekends.

18 HEARING OFFICER VALKOSKY: Did you have
19 anything --

20 MS. WILLIS: Yes, we did. Kerry Willis,
21 Staff Counsel.

22 I just wanted to add that if we could
23 have Waste Management be heard on the 13th, if
24 that's -- if those are the dates chosen, we do
25 have a Staff conflict on the 14th.

1 Also, I just wanted to apologize to --
2 there was a typo in our Prehearing Conference
3 Statement. We meant the undisputed topics to be
4 held in Sacramento, not the other topics. So I
5 think you --

6 HEARING OFFICER VALKOSKY: As we --

7 MS. WILLIS: -- that's our fault, and we
8 apologize.

9 HEARING OFFICER VALKOSKY: -- as we've
10 found out today, there are no undisputed topics,
11 so --

12 (Laughter.)

13 MS. WILLIS: And -- and we --

14 HEARING OFFICER VALKOSKY: -- that makes
15 it easy.

16 MS. WILLIS: -- and we fully understand
17 that all -- all topics will be held in Sacramento.
18 And just finally, for the record, we would
19 strongly object to having Mr. Kisabuli provide
20 testimony in Noise, as he is not the witness that
21 prepared the testimony that we provided in our
22 Final Staff Assessment. It was Mr. Alan Rosen.
23 And we would strongly object to having other
24 parties basically tell us who our witnesses are in
25 this case, as we've respected other parties to

1 provide their own witnesses.

2 MR. AJLOUNY: Can I respond to that?

3 HEARING OFFICER VALKOSKY: No. We have
4 -- we're off of that. We know you want Kisabuli.
5 Staff objects. The Committee will consider it.
6 There's really nothing else that can be added.

7 Mr. Harris.

8 MR. HARRIS: I just wanted to briefly
9 comment on the schedule. We also support the
10 staggering. We would like it, though, to start in
11 December. We think we've been very accommodating
12 on the schedule. We're 18 months into the
13 process. The Supplements B and C were -- led to
14 us, you know, essentially getting out of the 12
15 month process. We're in response to concerns
16 raised by the community and by the city, and so we
17 think we have been very accommodating. We also
18 think it would be easier on everyone if we take
19 those non-controversial topics early on. And so
20 that would be our strong preference.

21 The -- the burden is on us to put
22 together the testimony. Staff's testimony is
23 already there. We're prepared to meet the date of
24 the 7th, and I'd also note that the information
25 that we're going to be providing has been

1 docketed. Most of it's been filed and served on
2 everybody here, and so there's nothing new in that
3 respect, as well. So we're willing to meet that
4 burden.

5 HEARING OFFICER VALKOSKY: I'm sorry,
6 Mr. Harris. Did you say meet the date of the 7th,
7 or beat the date of the 7th?

8 (Laughter.)

9 MR. HARRIS: I think I said meet, but --

10 HEARING OFFICER VALKOSKY: Thank you.

11 Okay. With that, let's take a recess, a
12 ten minute recess, until about quarter to nine.

13 (Thereupon a recess was taken.)

14 HEARING OFFICER VALKOSKY: We'll
15 reconvene as soon as possible, please. Get your
16 seats. I don't want to seem that I'm rushing
17 anybody more than usual, but I am informed we have
18 to be out of this building by ten, which is about
19 an hour from now. And in order to save everybody
20 the necessity of discussing this stuff in yet
21 another session, I'd really, really appreciate it
22 if the parties could stay focused on the purposes
23 of tonight.

24 Okay. We're --

25 PRESIDING MEMBER LAURIE: Are we on the

1 record?

2 HEARING OFFICER VALKOSKY: On the
3 record. All right.

4 Obviously, these tentative dates have
5 created a degree of confusion, so when we're going
6 through Groups II and III here, let's just put any
7 particular dates aside, and try to deal with the
8 substance, that is the identification of
9 witnesses' cross examination, so we can estimate
10 how much time it's going to take.

11 With that, the next topic is Biological
12 Resources.

13 Is the Applicant going to file any
14 substantial new information on the topic of
15 Biological Resources?

16 MR. HARRIS: We have nothing further,
17 but the Biological Opinion will be coming in. I
18 don't know when.

19 HEARING OFFICER VALKOSKY: Right. Would
20 you have any idea when that's going to come in,
21 Mr. Harris?

22 MR. HARRIS: The -- Cecilia from --
23 Brown, from the Fish and Wildlife Service, is just
24 back from maternity leave. We've spoken to her.
25 She is -- I think we can get sometime in the next

1 couple of weeks, but she wouldn't commit to a firm
2 date, given that she just got back to work.

3 HEARING OFFICER VALKOSKY: By the end of
4 the year. Is that safe?

5 MR. HARRIS: No sooner than the next
6 couple of weeks. I'd say no sooner than the next
7 couple of weeks. Apparently we did ask for a date
8 certain, and she wasn't able to give one to us.

9 HEARING OFFICER VALKOSKY: Again, I'm
10 just -- I'm just trying to get handle on this.
11 Middle of January. End of January.

12 MR. HARRIS: It's a guess, at this
13 point. It really is a guess.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. HARRIS: I guess I would note that
16 in other cases they've come in later, as well.

17 HEARING OFFICER VALKOSKY: Understand.
18 Thank you.

19 Does Staff have any information on the
20 -- okay.

21 MR. HARRIS: Mr. Valkosky --

22 HEARING OFFICER VALKOSKY: Let Staff
23 answer.

24 MR. RICHINS: We have a call in to her,
25 but don't have anymore new information.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. RICHINS: We can -- we can inform
3 the Committee when we learn of a date.

4 HEARING OFFICER VALKOSKY: Thank you,
5 Mr. Richins.

6 Mr. Harris.

7 MR. HARRIS: It's our understanding that
8 -- that she will be available to testify, as well,
9 in time for the hearings in January, so -- even
10 ahead of the final document being available, as we
11 did in the Delta case.

12 HEARING OFFICER VALKOSKY: Okay. Does
13 Staff have any -- again, leaving the Section 7
14 consultation on the side -- does Staff have any
15 new -- significant new information that it's going
16 to be submitting on the topic of the Biological
17 Resources?

18 MS. WILLIS: No, we do not.

19 HEARING OFFICER VALKOSKY: Okay.

20 At this time, Roberta.

21 PUBLIC ADVISER MENDONCA: Yes.

22 HEARING OFFICER VALKOSKY: Okay. Yeah,
23 I'd just like to go through this, because the
24 representative of Morgan Hill had to go, but she
25 did leave our Public Adviser with their answers to

1 some of the questions we had. If you could just
2 read them, please.

3 PUBLIC ADVISER: Yes, I'd like -- do you
4 want me to do them all at once?

5 HEARING OFFICER VALKOSKY: Yeah. Yeah,
6 do them -- do them all at once.

7 PUBLIC ADVISER MENDONCA: Okay. Helene
8 left me her list, and in the Biological Resources
9 she would eliminate the witness.

10 In Traffic and Transportation --

11 HEARING OFFICER VALKOSKY: Well, now how
12 about cross examination for Biological Resources?
13 She didn't have a witness.

14 PUBLIC ADVISER MENDONCA: She did not
15 leave me that information.

16 HEARING OFFICER VALKOSKY: Okay.
17 Traffic.

18 PUBLIC ADVISER MENDONCA: And
19 Transportation, she says 30 minutes.

20 And she skips down to Soil and Water
21 Resources, and she eliminates the city.

22 HEARING OFFICER VALKOSKY: Okay.

23 PUBLIC ADVISER MENDONCA: And in
24 Socioeconomics, she says ten minutes.

25 In Land Use, she says ten minutes. In

1 Visual Resources, she says ten minutes.

2 Air Quality and Public Health. Her
3 witness is the same, Chang, Nuss, and Wang, 45
4 minutes. And in cross examination, she has ten
5 minutes.

6 In Transmission System Engineering and
7 Local System Effects, she has eliminated cross
8 examination. And in Alternatives, she identifies
9 ten minutes for cross examination.

10 And that's all I have. And I will be
11 glad to give you a copy of this.

12 HEARING OFFICER VALKOSKY: Thank you.
13 Thank you, Ms. Mendonca. I appreciate that.

14 And Mr. Williams, I apologize for -- for
15 going out of turn, but it was the -- it was the
16 most efficient way at this time.

17 Okay. Biological Resources. Mr.
18 Williams.

19 MR. WILLIAMS: Thank you, sir. Just
20 because of the delay in the Fish and Wildlife
21 thing, I -- I don't -- it seems to me like this
22 could easily move to the third group, and perhaps
23 something from the third group come forward. I --
24 I think we just run the risk of creating a
25 schedule crisis by scheduling something that we

1 don't even have in hand yet.

2 I -- I would like to, in any event,
3 reserve 15 minutes for cross examination.

4 HEARING OFFICER VALKOSKY: On what
5 particular -- what particular nature of the cross
6 examination?

7 MR. WILLIAMS: Okay. This would be the
8 effect of the plume deposition on the biological
9 species. Has that been properly accounted.

10 HEARING OFFICER VALKOSKY: Fine. Thank
11 you.

12 Ms. Cord. Nothing. Okay.

13 Mr. Wade. Mr. Scholz.

14 MR. SCHOLZ: I don't expect to have any.
15 Could we clarify that we do have the right to ask
16 any question if it wasn't asked? I mean, if
17 there's something outstanding, if we don't mention
18 anything right now, just to simplify this, do we
19 have the right to ask a question or two?

20 HEARING OFFICER VALKOSKY: A reasonable
21 degree of latitude.

22 MR. SCHOLZ: Okay. Thank you. We have
23 no --

24 HEARING OFFICER VALKOSKY: Yes.

25 MR. AJLOUNY: Ten minutes. This is Isa.

1 HEARING OFFICER VALKOSKY: What will be
2 the nature of your cross, Isa, on Biological
3 Resources? What's your particular area of
4 interest?

5 MR. AJLOUNY: The concern of the salts
6 in the emissions and the butterfly, and my red-
7 legged frog buddy.

8 HEARING OFFICER VALKOSKY: Okay, fine.

9 CVRP? No.

10 MS. PREVETTI: Laurel Prevetti, City of
11 San Jose. We would like to bring forward a
12 witness on Biological Resources, Mr. Kent Edens,
13 E-d-e-n-s. Again, Deputy Director of Planning.
14 Fifteen minutes. And then cross examination, also
15 15 minutes.

16 HEARING OFFICER VALKOSKY: Okay, thank
17 you.

18 Mr. Murphy.

19 MR. MURPHY: None, sir.

20 HEARING OFFICER VALKOSKY: All right.
21 Anything else on Biological Resources?

22 I'm sorry. Yes, Ms. Willis.

23 MS. WILLIS: Staff would like to reserve
24 10 to 15 minutes, depending on the nature of
25 other's testimony, for cross.

1 HEARING OFFICER VALKOSKY: Okay.

2 Traffic and Transportation. Anything
3 new that we can look forward to from Applicant?

4 No, nothing new from Applicant.

5 Staff?

6 MS. WILLIS: Nothing that I know of at
7 this time.

8 HEARING OFFICER VALKOSKY: Okay. Okay,
9 additional witnesses or cross examination. Mr.
10 Williams.

11 MR. WILLIAMS: Yes, sir. I was under
12 the impression that the Staff might do an accident
13 analysis that involved estimating the
14 consequences. I would like to present for about
15 30 minutes on the consequences of an ammonia
16 accident, and --

17 HEARING OFFICER VALKOSKY: Okay. But
18 let's -- now, I understand there's overlap, and
19 once again, Mr. Richins or Ms. Willis, clarify
20 this for me. Would the risks from the ammonia
21 transportation be more appropriate under Haz Mat,
22 Hazardous Materials Handling, or Traffic and
23 Transportation?

24 MS. WILLIS: We believe it -- we handled
25 it under Hazardous Materials.

1 MR. WILLIAMS: The reason I would do it
2 here is I would just have a smaller bite of the
3 apple under Traffic and Transportation, and then I
4 would deal with the natural gas detonation under
5 Hazardous Materials.

6 MS. WILLIS: Staff would propose that
7 both those topics be handled as a team, or as a
8 panel, if that would work --

9 HEARING OFFICER VALKOSKY: Okay.

10 MS. WILLIS: -- for this topic.

11 HEARING OFFICER VALKOSKY: Now, that --
12 that may be the most economical way to do it, just
13 combine the topics.

14 MR. WILLIAMS: Okay. You know, it's my
15 allegation that the -- the ammonia is an accident
16 that can be mitigated in one of several ways, and
17 the present analysis is deficient by looking only
18 at the probability and not the consequence. And
19 they're related issues on the natural gas
20 detonation.

21 I -- I think both of these in my
22 supplemental submittal that I handed to you only
23 today, so I understand if you haven't read it,
24 under --

25 HEARING OFFICER VALKOSKY: Okay. Now,

1 you --

2 MR. WILLIAMS: -- I was needing about
3 three hours for the combined ammonia and gas
4 explosion issues.

5 HEARING OFFICER VALKOSKY: Is this for
6 your direct testimony?

7 MR. WILLIAMS: Well, and I guess that's
8 where I need a clarification. Is there a whole
9 'nother round of hearings following this first set
10 of three?

11 HEARING OFFICER VALKOSKY: No.

12 MR. WILLIAMS: No. This is it.

13 HEARING OFFICER VALKOSKY: This is it.

14 MR. WILLIAMS: So in that case, I've got
15 to --

16 HEARING OFFICER VALKOSKY: Unless -- let
17 me -- let me add a proviso on there. Unless after
18 reviewing all of the evidence of record, the
19 Committee determines that it has insufficient or
20 insufficiently clear information to render a
21 decision, then the Committee would have the
22 prerogative of convening another hearing on very
23 limited areas. But -- but our basis structure is
24 no, this is the shot, you know, these hearings.

25 MR. WILLIAMS: Well, between the natural

1 gas and the ammonia, I need about three hours.

2 HEARING OFFICER VALKOSKY: Who will your
3 witness be?

4 MR. WILLIAMS: Well, I have several
5 friends from EPRI, one of whom in particular is on
6 vacation, but will support me. I think I can
7 stand as a expert witness in doing transportation
8 risk assessment because of the work I've done at
9 EPRI. And the issue is simply to say that you do
10 not have to accept the ammonia risks, and they are
11 more severe than you have stated. And you should
12 take precautions against the natural gas
13 detonation risks, because you are just building
14 the pipes to existing codes and standards, which
15 don't have quick closing valves and which don't
16 protect against breaks due to soil liquefaction
17 and due to train derailment.

18 HEARING OFFICER VALKOSKY: Okay. So --
19 so basically, again, you would have yourself and
20 at least one other person --

21 MR. WILLIAMS: Yes.

22 HEARING OFFICER VALKOSKY: -- that you
23 will bring, and will have to identify and file --
24 prefile testimony for.

25 Okay. Now, how about your cross

1 examination on -- and deal with this as a combined
2 topic.

3 MR. WILLIAMS: Well, I -- I think --

4 HEARING OFFICER VALKOSKY: Traffic and
5 Haz Mat.

6 MR. WILLIAMS: Traffic and Haz Mat, you
7 know, will be why didn't you improve your
8 testimony as you promised. Is that an acceptable
9 kind of question --

10 HEARING OFFICER VALKOSKY: We -- I'm
11 really, really looking right now to your estimate
12 for the time.

13 MR. WILLIAMS: I think I'll need 15
14 minutes in each area.

15 HEARING OFFICER VALKOSKY: Thank you.

16 Ms. Cord.

17 MS. CORD: I had a question right before
18 the break about the 13th and 14th, that are the
19 proposed dates. I'm just wondering, in terms of
20 the process, who was notified of those dates?
21 Staff or Applicant? I think it's clear the
22 Intervenors weren't.

23 HEARING OFFICER VALKOSKY: No, those are
24 -- those are totally tentative dates.

25 MS. CORD: I understand.

1 HEARING OFFICER VALKOSKY: That's all
2 they are.

3 MS. CORD: No one knew them but you? Or
4 did anyone know --

5 HEARING OFFICER VALKOSKY: No, I -- I
6 imagine other people working at the Commission
7 knew about them. You know. Because it's an
8 organization, things get out.

9 MS. CORD: Right, right. Yeah, I'm just
10 -- I'm just curious, the process.

11 HEARING OFFICER VALKOSKY: Those weren't
12 cleared with anyone.

13 MS. CORD: Applicant wasn't informed or
14 consulted about those dates?

15 HEARING OFFICER VALKOSKY: Not
16 consulted. Applicant may have heard about it
17 because I believe a secretary, my secretary looked
18 into hearing rooms for those dates.

19 MS. CORD: Oh, okay.

20 HEARING OFFICER VALKOSKY: You know. I
21 mean, that's -- and I don't know past that.

22 MS. CORD: Okay. Thank you.

23 HEARING OFFICER VALKOSKY: Yeah.

24 MS. CORD: You were asking me about the
25 cross for Traffic and --

1 HEARING OFFICER VALKOSKY: Yeah. For
2 Traffic and Transportation and Hazardous Materials
3 Handling. I'm asking you if you intend to propose
4 a witness; if so, who, the nature of the
5 testimony, how long will it be. Or if not, does
6 your organization care to cross examine on those
7 topic areas?

8 MS. CORD: No witness, and about 20 to
9 30 minutes to cross examine.

10 HEARING OFFICER VALKOSKY: Thank you.

11 MS. CORD: Thank you.

12 HEARING OFFICER VALKOSKY: Mr. Wade.

13 MR. WADE: Thank you. I believe ten
14 minutes would cover my time for cross examination.

15 HEARING OFFICER VALKOSKY: Thanks.

16 Mr. Scholz.

17 MR. SCHOLZ: I would like to reserve ten
18 minutes. I assume those concerns are the same
19 from all of the Intervenors' perspective on this
20 one. It's a black box right now as what the route
21 of the ammonia deliveries are. That's been raised
22 numerous times. I'm not sure if the Commission is
23 aware that that's our major objection with that,
24 the route has never been identified or the
25 scheduling of when those deliveries would be made.

1 We would appreciate -- it says right
2 now, or I think Applicant just stated that they're
3 not going to provide that information, so that's
4 what we would probably be cross examining on.

5 HEARING OFFICER VALKOSKY: Okay.

6 Isa, now, we're put your witness, Mr.
7 Spellman, I believe, under this joint topic. So
8 consider that done. And you had indicated you
9 wanted ten minutes for -- actually, 20 -- no, I'm
10 sorry, ten minutes for cross, 20 minutes for
11 combined cross.

12 Is that still current?

13 MR. AJLOUNY: Yes, that is.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. AJLOUNY: And I -- just a point, in
16 just to understand. In the workshops we were
17 promised a route. And I -- I can't prepare my
18 testimony without --

19 HEARING OFFICER VALKOSKY: You were
20 promised a what? I'm sorry.

21 MR. AJLOUNY: A routing of the trucks.

22 HEARING OFFICER VALKOSKY: Oh, I'm --
23 yeah. Actually -- actually, you bring up a
24 question that I meant to ask Staff. In fact, I
25 think also CVRP did.

1 There was at least a representation that
2 Staff would perform further analysis and
3 investigation of additional mitigation for Haz
4 Mat. Ms. Willis and/or Mr. Richins, are you
5 familiar with that?

6 MR. RICHINS: There was extensive
7 discussions, as you might imagine, at our
8 workshops. The only promise I made was that we
9 would investigate further, and if we felt it
10 appropriate we would file additional information.
11 At this time, we don't -- we're not proposing or
12 planning to file any additional information.

13 Two of the subjects were the shutoff
14 valves that Mr. Williams talked about, and the
15 other was on traffic and transportation route of
16 ammonia. The AFC does describe a route, as I
17 understand, and so we are investigating, but we
18 don't have any proposal right now to file
19 anything.

20 HEARING OFFICER VALKOSKY: When will you
21 know if you're going to have a proposal? In other
22 words, when will your investigation be complete?

23 MR. RICHINS: We'll be ready by
24 hearings.

25 HEARING OFFICER VALKOSKY: That's pretty

1 general, Mr. Richins, because I think --

2 MR. RICHINS: Well --

3 HEARING OFFICER VALKOSKY: No, I mean,
4 if -- if you're going to submit any additional
5 information, I'm sure all the parties here would
6 like an advance peek at it before hearings. You
7 know. So -- so --

8 MR. RICHINS: Okay. We don't plan -- as
9 Kerry said, we don't plan to file anything at this
10 time.

11 MR. AJLOUNY: Well -- well, I guess, for
12 the record, in the workshop we were promised a
13 routing, and we were -- I'm still waiting for my
14 map, the color map, because in the FSA you cannot
15 tell what the general area is.

16 HEARING OFFICER VALKOSKY: Okay. Isa,
17 who promised you the routing?

18 MR. AJLOUNY: Mr. Richins.

19 HEARING OFFICER VALKOSKY: Okay. Mr. --
20 Mr. Richins, is that correct?

21 MR. RICHINS: As I stated earlier, I did
22 not make such a promise. The only promise I made
23 is that we would investigate. I did not promise
24 that we would file anything new. And, in fact, I
25 told the parties specifically that in preparing

1 for this hearing today, that they need to prepare
2 their materials based on what they had in their
3 hands at that time, which was the Final Staff
4 Assessment.

5 HEARING OFFICER VALKOSKY: Okay. Thank
6 you. Just -- just a minute, Ms. Grueneich.

7 Okay, Isa.

8 MR. AJLOUNY: I'm not --

9 HEARING OFFICER VALKOSKY: Okay. Ms.
10 Grueneich.

11 MS. GRUENEICH: We have the record of a
12 voice mail call back from Mr. Richins on November
13 27th, in which we believe the voice mail stated
14 that for ammonia transport, Staff will be
15 indicating prescribed delivery routes for the
16 ammonia trucks. Am I mistaking what the voice
17 mail message to us was? And we understood that
18 that meant that that was additional information
19 that was coming in, and we were unclear if it was
20 going to be before the hearing or orally, at the
21 time of the hearing.

22 This was on November 27th, Monday.

23 PRESIDING MEMBER LAURIE: Well, Mr.
24 Richins, before you answer. Mr. Valkosky, this
25 will be evidence relevant to the Committee

1 proceeding the Committee will want to hear, for
2 the purposes of the evidence. We would therefore
3 expect that prior to the hearing on the issue,
4 that additional evidence will be presented. Is
5 there any question of that?

6 Whether or not Mr. Richins promised it
7 at one point or another is not my concern tonight.
8 My concern is that the evidence is presented when
9 the Committee needs it. And with an adequate time
10 for folks to cross examine on it.

11 MR. SCHOLZ: Would you agree -- this is
12 Scott Scholz. Would you agree, Mr. Laurie, or
13 Commissioner Laurie, that you would want to know
14 what the route was? Because we've been asking for
15 quite some time what the route is, and all we know
16 is that the truck will be there at the site.
17 That's basically all we know. We don't know how
18 it gets there.

19 PRESIDING MEMBER LAURIE: The -- the
20 issue of the routing could be relevant if it is
21 shown that, depending upon certain routes, hazards
22 are -- are created. But I -- I don't know -- I
23 don't know what the evidence is. So that's as
24 much as I can say today.

25 MR. AJLOUNY: Well, it has been shown as

1 a very big concern to the city, because the ramp
2 is right over the playground of the elementary
3 school, and that's the only reason it --

4 PRESIDING MEMBER LAURIE: Okay. The
5 point -- the point being is that if evidence is
6 planned to be introduced, then the evidence has to
7 be provided in sufficient time for folks to be
8 knowledgeable and have an opportunity to cross
9 examine. If the Committee feels that the evidence
10 has not been introduced and the Committee wants
11 it, the Committee will ask for it.

12 MR. AJLOUNY: Okay. Great.

13 PRESIDING MEMBER LAURIE: But there
14 won't be any surprises about it.

15 HEARING OFFICER VALKOSKY: Okay. Ms.
16 Grueneich. I'm sorry.

17 MR. BEERS: Procedurally, I think --

18 HEARING OFFICER VALKOSKY: Identify
19 yourself for the record, please.

20 MR. BEERS: Roger Beers. We had
21 identified Steven Reyes as a witness that we
22 expected to produce to present testimony on
23 Hazardous Materials Management. We'd estimate 45
24 minutes for the presentation of his testimony.

25 We had, in addition, suggested eight

1 hours in toto for cross examination, but I think
2 in fairness, that could be reduced to four hours
3 in toto for all the cross examination on Hazardous
4 Materials Management. And understanding also that
5 that may include some overlap with Traffic and
6 Transportation.

7 HEARING OFFICER VALKOSKY: Right.

8 Because we're dealing with it as --

9 MR. BEERS: Right. Right.

10 HEARING OFFICER VALKOSKY: -- will be
11 dealing as a combined topic.

12 MR. BEERS: Finally, it does seem
13 important to me to get not only the information on
14 routing in advance of cross examination
15 opportunity, but also in advance of the
16 preparation of other testimony. I mean, Mr. Reyes
17 is going to present testimony relating to his
18 evaluation of the possibility of accidents, and
19 what the consequences of those accidents would be.
20 And if Staff's going to be doing further
21 investigation or making proposals on routes, I'd
22 like to be able to present that to him so that
23 that could be part of his analysis that's done for
24 purposes of presenting his testimony.

25 This may be an indication that this is

1 an item that's of sufficient purpose, or
2 importance, that it ought to be moved to the third
3 category.

4 MR. ELLISON: Chris Ellison, on behalf
5 of the Applicant.

6 Maybe we can clear this up. We -- we
7 have a proposed route. We'd be happy to tell
8 everybody what it is right now.

9 MR. BEERS: Yeah. I --

10 MR. ELLISON: If that's the confusion.
11 I understand it's been revealed previously. If --
12 I'm not sure why this is being left to the Staff.
13 I think it is reasonable, frankly, for these
14 parties to want to know what the route is, and --

15 HEARING OFFICER VALKOSKY: Well, good.
16 then --

17 MR. ELLISON: -- we'd be happy to --

18 HEARING OFFICER VALKOSKY: -- then the
19 problem will go away. However, I have -- I have
20 one request, and that's I'd really like to get
21 through this stuff. But you will be held to
22 revealing the route to the parties.

23 How long is going to take you, Chris?
24 Go ahead.

25 MR. ABREU: I've done this before, and I

1 mentioned it at the Planning Commission hearing,
2 as well, that the route would be going off 101,
3 taking Burnell, then going down to Monterey Road,
4 come down Monterey Road to Blanchard, and then on
5 to the plant site from there.

6 MR. BEERS: That's not --

7 MR. ABREU: That's -- that's the route.

8 MR. BEERS: Okay. And we're interested
9 if the Staff is going to be proposing a different
10 route, which hasn't been proposed so far, or
11 making comments on that route. We'd like to
12 receive that information in advance of the
13 testimony. That's something that hasn't happened,
14 as opposed to something that has.

15 MR. RICHINS: We believe the conditions
16 that we proposed in the FSA adequately cover. We
17 analyzed the route that's been previously
18 described, and we believe the Conditions of
19 Certification cover that.

20 HEARING OFFICER VALKOSKY: So in other
21 words, you will not be proposing another route? I
22 mean, that --

23 MR. RICHINS: We wouldn't propose a new
24 route, other than what you just heard today.

25 HEARING OFFICER VALKOSKY: Okay.

1 MR. AJLOUNY: Is that in the FSA?

2 HEARING OFFICER VALKOSKY: That's where
3 we stand.

4 MR. AJLOUNY: Is it in the FSA?

5 HEARING OFFICER VALKOSKY: I'm sorry.
6 Isa, really, just take -- take -- the Conditions
7 of Certification do appear, or at least should
8 certainly appear in the FSA, dealing with -- the
9 conditions dealing with the transport of hazardous
10 materials. Okay.

11 MR. AJLOUNY: I just -- my name is Isa,
12 and I guess we all had deaf ears at the workshop.

13 HEARING OFFICER VALKOSKY: Okay. I --
14 and that's -- that's something I think we've dealt
15 with enough here.

16 Anything else from CVRP? No. Thank
17 you.

18 Ms. Prevetti.

19 MS. PREVETTI: Thank you. With respect
20 to Hazardous Materials Management, we would like
21 to bring forward a witness, Kent Edens, again, E-
22 d-e-n-s. And an approximate time of 30 minutes
23 for testimony. With respect to cross examination,
24 we anticipate about ten minutes on the Traffic and
25 Transportation issues, and another ten minutes on

1 Hazardous Materials.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Mr. Murphy.

4 Okay. Any -- Ms. Willis.

5 MS. WILLIS: Yes. Staff would like to
6 reserve the right to cross examine other
7 witnesses. At this time it would be difficult to
8 estimate a time without seeing the other
9 testimony.

10 HEARING OFFICER VALKOSKY: Understood.
11 But obviously I think we'll be able to accommodate
12 it, because I don't think those topics will be
13 combined with any others.

14 Okay. Anything else on the joint topic
15 of Traffic, Transportation, and Hazardous
16 Materials Management?

17 Okay. Soil and Water Resources. Any
18 new info forthcoming from Applicant, Mr. Abreu or
19 Harris, Schneider -- or, Ellison, I'm sorry.
20 Sorry, Chris.

21 MR. HARRIS: Nothing.

22 HEARING OFFICER VALKOSKY: Staff?

23 MS. WILLIS: Nothing.

24 HEARING OFFICER VALKOSKY: Okay. Mr.
25 Williams.

1 MR. WILLIAMS: Yes, on Table 2, Item 8
2 of my supplementary submittal of today, I wanted
3 to talk about two issues in particular, the
4 salinity mitigation and the recycled waterline
5 route. And Item 9, the -- no, excuse me. In Item
6 8, the rationing requirement during drought years.
7 I estimate that in total my presentation and cross
8 examination might take four hours.

9 HEARING OFFICER VALKOSKY: Okay. When
10 you say your presentation, back up there. Are we
11 talking -- are you going to be a witness on that,
12 or are you going to present a witness?

13 MR. WILLIAMS: I'll begin by questioning
14 the Staff as to --

15 HEARING OFFICER VALKOSKY: Okay. No,
16 that's -- that's cross examination. That's
17 different from putting a witness on the stand who
18 is qualified to speak on the subject.

19 MR. WILLIAMS: Well, let --

20 HEARING OFFICER VALKOSKY: That's --
21 that's what I'm asking. That's the first step.

22 MR. WILLIAMS: Okay. The first -- the
23 first point was the Staff had agreed, or at least
24 it was willing to entertain the idea of a
25 condition of compliance that related to cutting --

1 if we were all on water rationing because of a
2 drought year, that the plant similarly would go on
3 water rationing, and that there would be a
4 condition of compliance related to rationing of
5 the potable water.

6 Now, to the best of my knowledge, that
7 has not been forthcoming, so we'll have to invent
8 it from whole cloth during this hearing. Right?
9 I'll have to submit it and we'll have to argue
10 about it, right?

11 HEARING OFFICER VALKOSKY: Now, are you
12 going to put a witness on to testify to that?
13 That's what I'm asking. Or are you going to cross
14 examine --

15 MR. WILLIAMS: Well, I will --

16 HEARING OFFICER VALKOSKY: -- the other
17 witnesses and hope to get them to admit that your
18 idea is a sound one?

19 MR. WILLIAMS: Well, I --

20 HEARING OFFICER VALKOSKY: That's what
21 I'm talking about.

22 MR. WILLIAMS: -- I will provide myself
23 until I can identify someone as a qualified
24 hydrological witness. But I think this is an
25 argument in equity, that if the city is on water

1 rationing, the power plant should be on water
2 rationing.

3 HEARING OFFICER VALKOSKY: Fine. But
4 that's -- but that's an argument that you make.
5 That's not evidentiary. Okay. So you are going
6 to put a witness on. That's what I heard you say?

7 MR. WILLIAMS: Yes, sir.

8 HEARING OFFICER VALKOSKY: How long do
9 you think the direct testimony of that witness
10 will take?

11 MR. WILLIAMS: Well, okay. We can build
12 it from the bottom up. A half-hour for that
13 witness. A half-hour on salinity, and one hour on
14 the routing of the recycled water pipelines.

15 It's our contention that there has been
16 inadequate public discussion of the alternate
17 water recycled water pipeline routing. And it's
18 been represented in the last workshop that this
19 FSA was adequate as an EIS or EIR for the ten mile
20 pipeline routing. This is a major linear
21 facility.

22 HEARING OFFICER VALKOSKY: Okay. Right.
23 Now, you're going to put a witness on to testify
24 to an alternate route, or are you going to cross
25 examine the existing witnesses?

1 MR. WILLIAMS: Well --

2 HEARING OFFICER VALKOSKY: That's really
3 all I'm trying to get at.

4 MR. WILLIAMS: Okay. I'll -- an hour of
5 cross examination of the four alternatives, and an
6 hour of testimony, then, on a preferred one.

7 HEARING OFFICER VALKOSKY: Fine. Thank
8 you.

9 Ms. Cord.

10 MS. CORD: Thank you. Yes, we would
11 request 20 minutes for cross examination on water
12 related issues.

13 HEARING OFFICER VALKOSKY: You bet.

14 MS. CORD: Thank you.

15 HEARING OFFICER VALKOSKY: Mr. Wade.

16 MR. WADE: I don't require any time.
17 Thank you.

18 HEARING OFFICER VALKOSKY: Okay. Mr.
19 Scholz.

20 MR. SCHOLZ: I don't think I require any
21 extra time.

22 HEARING OFFICER VALKOSKY: Isa, is ten
23 minutes, correct?

24 MR. AJLOUNY: Yes.

25 HEARING OFFICER VALKOSKY: Dian.

1 MS. GRUENEICH: I did have -- I think
2 that our time, 45 minutes.

3 HEARING OFFICER VALKOSKY: Forty-five
4 for cross, right?

5 MS. GRUENEICH: Cross. And I guess I
6 wanted to understand, then. Did the Applicant --
7 maybe I'm misreading it. But it seems like
8 there's two hours of direct testimony, which would
9 seem unusually long if it's no new information and
10 it's just summarizing what we've already had. I'm
11 wondering if I'm misreading that.

12 MR. HARRIS: No, I don't think you are.
13 The 30 minutes for the first witness, Mr. Dickey,
14 is on the issue of soils. The 90 minutes is for
15 the three witnesses, presenting as a panel. And
16 in our statement, we said approximately 60 to 90
17 minutes, so we're not really certain as to how
18 much time that'll take. But -- but no new
19 information.

20 MS. GRUENEICH: Okay. I'll keep my
21 reserved time.

22 HEARING OFFICER VALKOSKY: Okay. Ms.
23 Prevetti.

24 MS. PREVETTI: Thank you. We will have
25 two witnesses in this topic of Soil and Water,

1 both addressing the water issue. Deputy Director
2 Randolph Shipers, S-h-i-p-e-s, with our Department
3 of Environmental Services. And from our City
4 Attorney's Office, Molly Dent, D-e-n-t. Total
5 time, 60 minutes.

6 And then we would like 20 minutes of
7 cross

8 HEARING OFFICER VALKOSKY: Okay. And
9 the -- the basic nature of the testimony from your
10 two witnesses?

11 MS. PREVETTI: We'll be talking about
12 the provision of water services, given the City
13 Council's recent action.

14 HEARING OFFICER VALKOSKY: Okay. Thank
15 you.

16 Staff have anything additional?

17 MS. WILLIS: Yes. We'd like to reserve
18 about 15 or 20 minutes for possible cross
19 examination.

20 HEARING OFFICER VALKOSKY: Okay.
21 Anything else on Soil and Water?

22 Before we get into Socioeconomics, and
23 again this is stuff I've -- I've seen in the
24 Prehearing Conference Statements, I believe Santa
25 Teresa Citizens Action Group had some question

1 about an up -- updated real estate study performed
2 by the Applicant.

3 MR. SCHOLZ: Can I --

4 HEARING OFFICER VALKOSKY: Scott --

5 MR. SCHOLZ: I was the one who --

6 HEARING OFFICER VALKOSKY: Oh, I'm
7 sorry.

8 MR. SCHOLZ: -- added that. And it did
9 come in the mail yesterday, or today. I haven't
10 had a chance to review it, except I did look at
11 the first part. There seems to be a gap from the
12 last report we were using to the current one. But
13 I haven't had a chance to review it.

14 So I appreciate that that was served on
15 --

16 HEARING OFFICER VALKOSKY: Okay. You
17 did get an updated real estate study. Mr. Harris,
18 is there any other study that Applicant has
19 performed that it has not provided?

20 MR. HARRIS: The reason I was hesitating
21 is that we will have testimony from -- Crisp on
22 the Environmental Justice issue. The direct
23 testimony will be submitted. I don't think
24 there's any new documents associated with that
25 testimony.

1 HEARING OFFICER VALKOSKY: Okay. No, I
2 was -- I was referring to the -- again, more the
3 -- as I understood it, the real estate study you
4 updated --

5 MR. HARRIS: Yeah, the real estate study
6 was in response to a data request. And we updated
7 that study and filed and served it, which Scott
8 has.

9 HEARING OFFICER VALKOSKY: Okay. And
10 that has been provided to all the parties. Not --
11 not yet, Mr. Williams.

12 MR. HARRIS: Yes, filed and served. I
13 think it arrived in today's mail, so --

14 HEARING OFFICER VALKOSKY: Okay. And to
15 Staff, and the Racquet Club's Prehearing
16 Conference Statement, there was an indication that
17 they had expected some information from Staff that
18 was referred to in one of the Staff assessments.
19 Is that correct, sir?

20 MR. WIKTOROWICZ: Wiktorowicz. Yeah, I
21 enclosed a copy of an e-mail correspondence
22 between myself and Mr. Richins in my Prehearing
23 Conference Statement, in which he indicated to me
24 that I would be getting a item that was generated
25 by -- I'm looking for the name -- Mr. Troy Austin,

1 that was referred to in the FSA on the
2 Socioeconomic chapter. I've not yet received
3 that, and therefore I can't make any --

4 HEARING OFFICER VALKOSKY: Okay. Mr.
5 Richins.

6 MR. RICHINS: As far as I know, we sent
7 it out a couple weeks ago.

8 MR. WIKTOROWICZ: I haven't received it.
9 Sorry.

10 MR. RICHINS: I'll double-check on that.
11 But, you know, when -- whatever the date of that
12 e-mail was the date that we mailed it, so I'll
13 double-check.

14 Now, are you --

15 MR. WIKTOROWICZ: You can come to my
16 house and look, but it's not --

17 MR. RICHINS: No, no. I -- I'm not
18 discounting what you're saying. I'm just saying
19 my understanding from my secretary is that she
20 mailed it.

21 MR. WIKTOROWICZ: I see. I see. Well,
22 if I can get it as soon as possible, it would --

23 HEARING OFFICER VALKOSKY: Yeah. I'm
24 sure Mr. Richins will provide it as soon as
25 possible. And you have those other materials that

1 you mentioned?

2 MR. WIKTOROWICZ: The supplements?

3 Yeah, I do have those supplements.

4 HEARING OFFICER VALKOSKY: Okay, good.

5 MR. WILLIAMS: Mr. Valkosky, is it my
6 turn right now?

7 HEARING OFFICER VALKOSKY: No, no. I
8 just wanted to get this missing information stuff
9 straightened out.

10 Okay. Mr. Harris, let me confirm once
11 more there will be no new information submitted by
12 Applicant on Socioeconomics, with the -- with the
13 exception of Ms. Crisp's Environmental Justice
14 analysis. Is that correct?

15 MR. HARRIS: We have had an economic
16 analysis performed by the Brown group. And that
17 information will go to the Socio testimony, but
18 we'd be prefiling. So that information --

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. HARRIS: -- will be filed and
21 served.

22 HEARING OFFICER VALKOSKY: That will be
23 coming in. All right. That'll be in your
24 prefiled testimony.

25 Anything from Staff?

1 MS. WILLIS: No, we do not have anything
2 additional.

3 HEARING OFFICER VALKOSKY: All right.
4 Mr. Williams.

5 MR. WILLIAMS: Yes, sir. In Table 2 of
6 my supplementary material, under Item 13, I intend
7 an approximate one to two hour review of two
8 studies that independent realtors in the area have
9 done, Robert Aldana and a Tim Ryan. Both spoke
10 briefly at the City Council two nights ago.

11 HEARING OFFICER VALKOSKY: And will
12 these gentlemen be testifying?

13 MR. WILLIAMS: These gentlemen will
14 testify.

15 HEARING OFFICER VALKOSKY: Okay. Could
16 you give me their names once again?

17 MR. WILLIAMS: Yes. They're A-l-d-a-n-
18 a, and Ryan, R-y-a-n.

19 HEARING OFFICER VALKOSKY: Okay. And
20 the approximate time for their testimony?

21 MR. WILLIAMS: Well, approximately one
22 and a half to two hours, including some remarks by
23 myself. I'm an economics whiz, in case you
24 wonder, with an MBA, and all kinds of credentials.

25 HEARING OFFICER VALKOSKY: Okay. How

1 about your cross?

2 MR. WILLIAMS: I will have to spend at
3 least 15 or 20 minutes telling you what's wrong
4 with Mr. Hulberg's survey. It is a very poor
5 piece of work.

6 HEARING OFFICER VALKOSKY: All right,
7 fine. Fifteen or 20 minutes.

8 Ms. Cord.

9 MS. CORD: Yeah, we'd like to call a
10 witness under Environmental Justice.

11 HEARING OFFICER VALKOSKY: Okay.

12 MS. CORD: It's Michael Stanley Jones.
13 And I'm guessing 20 minutes.

14 HEARING OFFICER VALKOSKY: And what will
15 be the nature of Mr. Jones' testimony?

16 MS. CORD: The composition of
17 Environmental Justice groups.

18 HEARING OFFICER VALKOSKY: Okay.

19 MS. CORD: And then cross, the 20
20 minutes still stands.

21 HEARING OFFICER VALKOSKY: All right.
22 Thank you.

23 Mr. Wade.

24 MR. WADE: I'd like to reserve five or
25 ten minutes for cross.

1 HEARING OFFICER VALKOSKY: Thank you.

2 Mr. Scholz.

3 MR. SCHOLZ: When we were combining our
4 document for this purpose, I was unaware that ST
5 Action was reserving for Michael Stanley Jones. I
6 kind of left it open that I would have some real
7 estate professionals come in with possible
8 testimony, so I would like to reserve the right to
9 produce more. And we'd like some guidance from
10 the Commission or the Hearing Officer, you know,
11 how much is too much, as far as redundancy, as far
12 as presenting testimony.

13 HEARING OFFICER VALKOSKY: Repetitive
14 evidence doesn't have any greater weight. I mean,
15 if, you know, I mean, you can get one qualified
16 expert to get up and say this is my opinion, you
17 can get five experts to say exactly the same
18 thing. It weighs the same.

19 MR. SCHOLZ: How about anecdotal
20 evidence that they've been affected already by the
21 -- just the mere possibility of a power plant in
22 the neighborhood?

23 HEARING OFFICER VALKOSKY: If it is --

24 MR. SCHOLZ: Do you only need to hear it
25 from one agent, and it's -- it's gospel truth, or

1 do you need to hear it from several? I mean, I
2 need some guidance there.

3 HEARING OFFICER VALKOSKY: Okay. Again,
4 if -- our standards are reasonable, and non-
5 repetitive evidence, and that's --

6 MR. SCHOLZ: Okay. I'll try and
7 coordinate --

8 HEARING OFFICER VALKOSKY: -- that's the
9 best I can tell you.

10 MR. SCHOLZ: -- with any other
11 intervenors that are --

12 HEARING OFFICER VALKOSKY: Yeah.

13 MR. SCHOLZ: -- that are bringing in
14 similar testimony. And with that guidance, I'll
15 try and -- we'll coordinate, and try and present
16 it as a total --

17 HEARING OFFICER VALKOSKY: Okay. As --
18 as far as your -- your description that it's
19 anecdotal, I -- I would caution you --

20 MR. SCHOLZ: First-hand anecdotal.

21 HEARING OFFICER VALKOSKY: Well --

22 MR. SCHOLZ: They personally
23 experienced.

24 HEARING OFFICER VALKOSKY: Okay. If it
25 is -- if it is within their knowledge and

1 experience, that's fine. Otherwise, it's just
2 hearsay.

3 MR. SCHOLZ: Well, is it hearsay if an
4 agent says they lost deals because --

5 HEARING OFFICER VALKOSKY: Well, then --
6 then I think it becomes a matter of whether the
7 agent can establish that he, in fact, lost deals,
8 and it is not merely a deal that went south for --
9 for a variety of reasons.

10 MR. SCHOLZ: Thank you for the guidance.
11 That's what you want, you know, he --

12 HEARING OFFICER VALKOSKY: Yeah.

13 MR. SCHOLZ: -- got to the contract
14 stage, and then they had to disclose the power
15 plant --

16 HEARING OFFICER VALKOSKY: No, it has to
17 be reasonably --

18 MR. SCHOLZ: -- and the people backed
19 out.

20 HEARING OFFICER VALKOSKY: --
21 ascertainable, factual things.

22 MR. SCHOLZ: Thank you for that
23 guidance. I would like to reserve -- but again, I
24 would like to coordinate with any other
25 Intervenors that are going to present similar

1 testimony so it isn't as redundant as it could be.

2 HEARING OFFICER VALKOSKY: Okay. And
3 the time?

4 MR. SCHOLZ: I would imagine anything
5 that I would provide could be done in 10 or 15
6 minutes.

7 HEARING OFFICER VALKOSKY: Fine. Thank
8 you, sir.

9 Isa, ten minutes still good?

10 MR. AJLOUNY: Isa. Yes.

11 HEARING OFFICER VALKOSKY: Sorry.
12 Sir.

13 MR. WIKTOROWICZ: Yeah, John
14 Wiktorowicz. As I mentioned, I'll be anticipating
15 the document from Staff, but -- and perhaps it's
16 more appropriate as a informal data request to the
17 Calpine folks, that I be copied on Mr. Hulberg's
18 both previous and updated assessment, if you
19 would, please.

20 I have an expert that I will be calling.

21 HEARING OFFICER VALKOSKY: Okay. Would
22 you identify him, please?

23 MR. WIKTOROWICZ: Professor Thayer
24 Watkins, Professor of Economics at San Jose State
25 University. I'll be presenting mostly non-

1 anecdotal evidence, historical evidence. And as I
2 mentioned, I believe you have me down for 30
3 minutes. I think that's --

4 HEARING OFFICER VALKOSKY: That's
5 correct.

6 MR. WIKTOROWICZ: I also reserve right
7 to cross examine, possibly 30 minutes.

8 HEARING OFFICER VALKOSKY: Thirty
9 minutes.

10 MR. WIKTOROWICZ: Yes, sir.

11 HEARING OFFICER VALKOSKY: And also, I'd
12 like to indicate to Applicant, at least the
13 interpretation I got of the nod, is that they
14 would be providing you that information. Was that
15 correct, Mr. Harris?

16 MR. HARRIS: Yeah. He should have
17 received the second study in the mail. If -- did
18 you become an Intervenor after the first one went
19 out? Because you should've gotten the first one,
20 as well. But if you don't have them, see us and
21 we'll get them to you.

22 HEARING OFFICER VALKOSKY: Okay. CVRP.

23 MS. PREVETTI: Nothing. Thank you.

24 HEARING OFFICER VALKOSKY: Ms. Prevetti.

25 Okay. Mr. Murphy.

1 MR. MURPHY: Okay, thank you. Mike
2 Murphy. I'll be coordinating with Scott and Mr.
3 Williams, also. Tim Ryan was on my list, and
4 Angie Cooke, C-o-o-k-e, realtors. First-hand
5 testimony.

6 HEARING OFFICER VALKOSKY: Okay. Now, I
7 understand from what Ms. -- Mr. -- excuse me, Mr.
8 Scholz said that these will be presented together
9 as a panel. I mean, there is going to be
10 coordination here.

11 MR. MURPHY: Yeah, we'll --

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. MURPHY: -- we'll coordinate.

14 HEARING OFFICER VALKOSKY: Okay. So Mr.
15 Scholz' estimate of 15 minutes is -- is still
16 accurate for this? That's -- Mr. Scholz.

17 MR. SCHOLZ: I think it would be added
18 into whatever Mr. Williams reserved, because he
19 identified two people --

20 HEARING OFFICER VALKOSKY: Right.
21 Right. No, I'm talking in the --

22 MR. SCHOLZ: As far as Mr. Murphy, yes,
23 I think we can do it together.

24 HEARING OFFICER VALKOSKY: Good. Thank
25 you.

1 Okay. Staff.

2 MS. WILLIS: We'd like to reserve about
3 20 minutes for cross examination, and obviously
4 that's based on the testimony that's provided by
5 the other parties.

6 HEARING OFFICER VALKOSKY: Right. I'm
7 sorry, I was remiss. Applicant, how much time
8 would you like for cross, roughly?

9 MR. WADE: I've noticed that Ms. Willis
10 at the end of each of these has indicated that
11 it's difficult for her to ascertain. We've
12 indicated in our statements, as well, until we see
13 the testimony it will be difficult. So if it
14 helps you, we can put 15 minute place holders in
15 there for the witnesses that have yet to file
16 testimony.

17 HEARING OFFICER VALKOSKY: That's fine.
18 This is, again, just -- just a rough scheduling
19 idea. That's all I'm after.

20 MR. ELLISON: Yeah, just -- just to
21 amplify that, Mr. Valkosky, because I've had the
22 same concern as I've listened to this. The
23 Applicant's estimates that are on your sheet here
24 are for Staff only.

25 HEARING OFFICER VALKOSKY: That's --

1 that's understood. You made that clear in your
2 statement.

3 All right. Anything else on
4 Socioeconomics. I'm sorry?

5 MS. GRUENEICH: I apologize very much.
6 I guess I did misunderstand. If -- why would the
7 Applicant be cross examining the Staff in the
8 areas where they're accepting the Staff
9 Assessment? I'm looking specifically at
10 Biological Resources and Soil and Water Resources.
11 And my understanding was that unless we heard
12 otherwise, we were assuming that the Applicant was
13 agreeing to what was in the Staff Assessment and
14 was not contesting any portions of it.

15 So that's where I'm -- I'm mixed up as
16 to why the Applicant would be doing cross
17 examination. Or in the areas listed of Biological
18 Resources and Soil and Water Resources, is the
19 Applicant in fact contesting what the Staff has
20 presented in the Staff Assessment?

21 HEARING OFFICER VALKOSKY: Mr. Ellison.

22 MR. ELLISON: Well, a couple of points.
23 First of all, there is such a thing as friendly
24 cross examination. And we may take advantage of
25 our right to do that, as other parties are welcome

1 to do, in order to bring out points that may not
2 have been sufficiently emphasized.

3 But secondly, the fact that the
4 Applicant agrees with the Conditions of
5 Certification doesn't necessarily mean we agree
6 with everything that the Staff says in support of
7 them. So there may be instances in which,
8 although we have no disagreement with the
9 Conditions of Certification, where there may be
10 something that we wish to examine the Staff on as
11 far as what's in their -- their FSA.

12 You'll note that most of the times that
13 we've reserved in these areas, even though some of
14 these are -- are very important issues, are very
15 minimal amounts of time relative for someone with
16 a stake, such as the Applicant, in this
17 proceeding.

18 HEARING OFFICER VALKOSKY: There's your
19 response.

20 MS. GRUENEICH: Well, I guess I would
21 request, then, I did not realize what this was
22 going to, that just in case through friendly cross
23 examination or disagreements over substance, that
24 CVRP be allowed -- and I apologize for going out
25 of order, I didn't understand the situation -- ten

1 minutes under Biological Resources. And I see
2 that we have reserved time under Soil and Water
3 Resources.

4 HEARING OFFICER VALKOSKY: Okay. Not a
5 problem.

6 Moving off Socioeconomics, I take it.

7 Land Use. Is there anything new from
8 Applicant that we can look forward to? No.

9 Staff?

10 MS. WILLIS: No.

11 HEARING OFFICER VALKOSKY: Mr. Williams.
12 Please use the microphone, sir.

13 MR. WILLIAMS: Remind me where visual
14 impacts is coming up.

15 HEARING OFFICER VALKOSKY: It's coming
16 up after Land Use.

17 MR. WILLIAMS: Okay. I will pass on
18 Land Use.

19 HEARING OFFICER VALKOSKY: Ms. Cord.

20 MS. CORD: You know, I'm sorry. I guess
21 I'm out of order here, in terms of the way we're
22 doing this. But I neglected to list a witness
23 that I wanted for Biological and Water.

24 HEARING OFFICER VALKOSKY: Oh, okay.
25 Well, since we're here, on Biology?

1 MS. CORD: Biological Resources. Libby
2 Lucas. And on Water, Libby Lucas.

3 HEARING OFFICER VALKOSKY: And what will
4 be the nature of Ms. Lucas' testimony on Biology?

5 MS. CORD: Under biological it has to do
6 with salmon, red-legged frogs, and the laddering
7 of Fisher Creek.

8 HEARING OFFICER VALKOSKY: Okay. And
9 the time for direct?

10 MS. CORD: Probably 30 minutes.

11 HEARING OFFICER VALKOSKY: Okay. Same
12 questions on Soil and Water.

13 MS. CORD: Well, actually, no. The
14 water is the water basin, deep aquifer, and the
15 modeling.

16 HEARING OFFICER VALKOSKY: Right.
17 That's -- that's included in the topic of Water
18 Resources.

19 MS. CORD: Yes.

20 HEARING OFFICER VALKOSKY: Yeah. So it
21 will be the modeling of the basin?

22 MS. CORD: Yes.

23 HEARING OFFICER VALKOSKY: And the time?

24 MS. CORD: Thirty.

25 HEARING OFFICER VALKOSKY: Thirty?

1 MS. CORD: Yes.

2 HEARING OFFICER VALKOSKY: Okay.

3 MS. CORD: And I have nothing on Land
4 Use. Thank you.

5 MR. WADE: Jeff Wade. I have nothing on
6 Land Use.

7 HEARING OFFICER VALKOSKY: Mr. Scholz.
8 Land Use.

9 MR. SCHOLZ: I'm sorry, I just came back
10 into the room. Can I come back to that? Thank
11 you.

12 HEARING OFFICER VALKOSKY: Okay. But --
13 I'm sorry.

14 MS. CORD: When I said nothing on Land
15 Use, we don't -- we're not calling a witness, but
16 we do have a 15 minute --

17 HEARING OFFICER VALKOSKY: You have 15
18 minutes reserved for cross examination. That's
19 correct.

20 MS. CORD: Yes. That -- that stands as
21 our request.

22 HEARING OFFICER VALKOSKY: Right.

23 MS. CORD: Thank you.

24 MR. AJLOUNY: Isa. As my Prehearing
25 Statement states.

1 HEARING OFFICER VALKOSKY: Ten minutes.

2 Okay. CVRP?

3 MS. GRUENEICH: In light of the City
4 Council's action this week, we would like to
5 reserve one and a half hours.

6 If I could ask for clarification on Land
7 Use, given that we now have the decision by the
8 City of San Jose not to grant the needed land use
9 entitlements, is the Applicant then planning on
10 submitting any information with regard to Land Use
11 that has not been already provided?

12 (Inaudible asides.)

13 MR. HARRIS: After that pregnant pause,
14 the answer, I guess, is no. At this point we
15 don't see anything different as a result.

16 MS. GRUENEICH: Okay. The one area that
17 I just wanted to make sure of is that as I
18 understand it, that if the City of San Jose had
19 made a decision to grant the land use
20 entitlements, that would've set the first stage
21 for an annexation process, that basically the
22 power plant's going to be on what is currently now
23 half city owned and half county land.

24 And so from what I understand, we're in
25 a situation now, moving forward where we have half

1 of it not in compliance with the city
2 requirements, and I guess I wanted to check from
3 the Staff, in its Land Use testimony in the Staff
4 Assessment, whether we have in the record now the
5 Staff's view as far as conformity with the half of
6 the power plant that would be on the county land.
7 Or was the assumption made in the Staff Assessment
8 that everything would convert over through
9 annexation to the city land, and therefore one
10 only need to look at it in terms of city land.

11 And this is a point I thought would make
12 sense to get clear, so we don't end up kind of at
13 the end of the day not sure where we ended.

14 MR. RICHINS: Well, we looked -- Paul
15 Richins, with Staff. The Staff person that did
16 the analysis looked both at city and county LORS
17 in this area, and it also has a footnote in the
18 testimony as it relates to what you are bringing
19 up, as -- as it relates to the annexation and the
20 law that's currently in place.

21 So I think we did analyze both city and
22 county LORS.

23 MS. GRUENEICH: Okay. Fine.

24 PRESIDING MEMBER LAURIE: Mr. Valkosky,
25 let me seek clarification as to what type of

1 evidence is deduced during the course of this
2 section.

3 My understanding is, from the FSA and
4 otherwise, that this issue deals with consistency
5 with local land use regulations. Is that correct?

6 MR. HARRIS: Yes.

7 PRESIDING MEMBER LAURIE: Given that, I
8 guess I -- question that I'd be interested in, why
9 we expect a lengthy even direct or cross. It's --
10 won't it be rather self evident whether there is
11 consistency or inconsistency, or will the question
12 of consistency or inconsistency be adjudicated?

13 Let me tell you one thing I'm trying to
14 avoid is I don't want to turn this into the City
15 Council hearing as to whether or not there should
16 be a general plan amendment, or there should be an
17 annexation. My understanding is this issue is --
18 this issue is -- is inconsistent. And I would
19 expect that's a yes or a no, and not subject to
20 much debate.

21 So I -- I would ask counsel why the
22 expectation of such a lengthy cross.

23 MS. GRUENEICH: My understanding was
24 that there were two aspects to the Land Use area.
25 And the first one, you are correct on,

1 consistency, and we did not anticipate any -- any
2 cross in that area. That's, in fact, why I was
3 confirming that we have the consistency
4 determination for both aspects.

5 But my understanding is that there is
6 also testimony, and one of the areas that the
7 Commission looks at is whether there is a
8 significant land use impact. And that is separate
9 from the question with regard to compliance with
10 laws and standards. And we would focus our cross
11 examination on that second area, and not on the
12 first area.

13 PRESIDING MEMBER LAURIE: Okay. Thank
14 you.

15 (Inaudible asides.)

16 HEARING OFFICER VALKOSKY: Mr. Beers.

17 MR. BEERS: Roger Beers. It does seem
18 to me that there's a situation here where people
19 are rendering judgments about the conformity of
20 this power plant with local land use laws, who are
21 not themselves in charge of administering those
22 laws and standards. And I, in briefly reviewing
23 the statements that are made in the Final Staff
24 Assessment, for example, since the City Council's
25 hearing this last week, have a great many

1 questions about the judgments that are rendered as
2 an expert opinion in the Staff's analysis as to
3 the conformity of this facility with local laws.

4 So I wanted to make sure that the
5 testimony that is presented, and the cross
6 examination that is permitted goes not only to
7 this question of significance, but also to the
8 question of whether, in fact, there is conformity
9 in each of the respects that is indicated in the
10 Staff's report, because I think there's a great
11 deal more misconformity than is set forth in that
12 report.

13 PRESIDING MEMBER LAURIE: So your --
14 your cross will go beyond -- aside from the
15 question of impacts, the -- the intent is that the
16 cross will go beyond the question of whether or
17 not it's consistent with the general plan, whether
18 or not an annexation has been complete. Is -- is
19 that the intent?

20 MR. BEERS: If I understand you, and I
21 apologize if I don't, I mean, there are a great
22 many judgments that are made across the board in
23 regard to whether or not this project is in
24 conformity with general plan elements, with
25 different kinds of requirements that exist. And I

1 want to make sure that we have an opportunity to
2 cross examine Staff insofar as they are making
3 those judgments, rather than the local land use
4 officials who are in charge of administering those
5 plans.

6 PRESIDING MEMBER LAURIE: Okay. I
7 understand.

8 HEARING OFFICER VALKOSKY: Ms. Prevetti.

9 MS. PREVETTI: Thank you very much. We
10 would like to bring two witnesses forward on the
11 topic of Land Use. The first being Mayor Ron
12 Gonzales, the second being Kent Edens. And with
13 the total time of 60 minutes. And we'd like the
14 -- to reserve a cross examination period of 30
15 minutes, please.

16 HEARING OFFICER VALKOSKY: Thank you.
17 Mr. Murphy.

18 MR. MURPHY: No.

19 HEARING OFFICER VALKOSKY: Staff.

20 MS. WILLIS: Thank you. We would like
21 to reserve some cross examination time. I would
22 imagine maybe 15 to 20 minutes, maximum.

23 HEARING OFFICER VALKOSKY: And I note
24 that the Applicant's got 45 --

25 MR. SCHOLZ: Do you --

1 HEARING OFFICER VALKOSKY: I'm sorry.

2 Mr. Scholz, you can't just --

3 MR. SCHOLZ: I'm sorry.

4 HEARING OFFICER VALKOSKY: Okay.

5 MS. WILLIS: Could I ask a clarifying
6 questions?

7 HEARING OFFICER VALKOSKY: Certainly.

8 MS. WILLIS: How much time was CVRP
9 requesting for cross examination, totally, on --
10 on Land Use? An hour and a half?

11 MR. BEERS: -- comes in subsequent to
12 that. That's roughly correct.

13 HEARING OFFICER VALKOSKY: Yeah, that's
14 what I have down, 90 minutes.

15 Okay. Anything else on Land Use? Come
16 on, folks, we're heading toward Group III.

17 Mr. Williams, if you could please
18 indicate -- we go around in order, and it would
19 just be more orderly if you could indicate at that
20 time. Okay?

21 MR. WILLIAMS: I'm sorry. I forgot --

22 HEARING OFFICER VALKOSKY: Mr. Williams,
23 it's the microphone, sir.

24 MR. WILLIAMS: There -- there is a five
25 page table in the Land Use analysis that has the

1 effect of making it appear that essentially all
2 the LORS are observed, and the table is, in fact,
3 padded full of local ordinances and regulations
4 that are immaterial. They're not as significant
5 as the ones that are not observed.

6 So my cross examination would deal with
7 the redundancy in that LORS table in the FSA.
8 Fifteen minutes.

9 CHAIRMAN KEESE: Mr. Chairman, I will --
10 I will note we've just committed to at least a
11 week's worth of hearings on Group II. At least 40
12 hours of hearings.

13 PRESIDING MEMBER LAURIE: Chairman
14 Keese, I don't know if we have -- if we have
15 committed to --

16 (Laughter.)

17 PRESIDING MEMBER LAURIE: We have a very
18 strong and urgent request for a week's worth of
19 hearings.

20 CHAIRMAN KEESE: Very good. Very good.

21 We are consulting with the true powers
22 that be, that is, the employees of the school
23 district. We had promised to -- they had
24 demanded, and we had agreed to be out by 10:00
25 o'clock.

1 (Inaudible asides.)

2 HEARING OFFICER VALKOSKY: Okay. The
3 situation now is we're searching for the school
4 officials to see if we can remain in the building
5 past 10:00 o'clock. I mean, that's -- that's
6 where it's at.

7 We'll go off the record. Let's go off
8 the record.

9 (Off the record.)

10 HEARING OFFICER VALKOSKY: Okay, back on
11 the record.

12 I have just been informed we're in
13 business until we're evicted, so let's do the best
14 we can. I'm sorry.

15 Ms. Cord.

16 MS. CORD: If we get caught we'll blame
17 it on you, is -- okay.

18 No. My question is this. I -- it's a
19 procedural question. What about -- we had
20 specified certain exhibits. How do we introduce
21 exhibits in the Evidentiary Hearings?

22 HEARING OFFICER VALKOSKY: Okay. What
23 that refers to are documents and other things that
24 you want the Commission to rely on as -- as
25 evidence. What you will be required to do is to

1 submit copies of any of those items in conjunction
2 with your prepared testimony pertaining to a
3 certain topic.

4 MS. CORD: Okay. So --

5 HEARING OFFICER VALKOSKY: For -- for
6 example, say you've got a real estate report that
7 you're relying on, and you've got a witness who is
8 competent to testify to that. When your filing
9 date comes up, you have that prepared testimony,
10 that exhibit that the testimony refers to and
11 relies upon, and that's sent to all the parties so
12 everybody knows what's coming, what's going to be
13 attempted to be entered into the record.

14 MS. CORD: Okay. So --

15 HEARING OFFICER VALKOSKY: That's what
16 it is.

17 MS. CORD: -- if I have an exhibit, for
18 instance, that I think would fit under
19 Socioeconomics, do I have to have a witness for
20 Socioeconomics? I have reserved time to cross,
21 but I guess I don't know how --

22 HEARING OFFICER VALKOSKY: Well, what --
23 what type of thing are you talking about?

24 MS. CORD: We have a 500 page petition
25 that we'd like to offer.

1 HEARING OFFICER VALKOSKY: Okay. That's
2 -- a petition is not evidentiary. I mean, it --
3 it doesn't establish a fact other than 500 people
4 got -- that could be docketed.

5 MS. CORD: It's 8,000 people, 500 pages.

6 HEARING OFFICER VALKOSKY: Yeah, okay.
7 I'm sorry. I'm sorry. Yeah. That can certainly
8 be docketed. That's -- that's in the
9 administrative record, that's something that the
10 Committee can look at, and realize is, you know,
11 an indication of whatever it is. Apparently a lot
12 of community opposition to a project. Yeah. That
13 doesn't -- that doesn't have to be placed into an
14 exhibit.

15 When I talk about the exhibits, I'm
16 talking about legal sense evidentiary items that
17 the Committee will use to reach findings of fact.

18 MS. CORD: So you would like that
19 particular item -- I don't know if it's an exhibit
20 or not -- you'd like it docketed prior to the
21 Evidentiary Hearings?

22 HEARING OFFICER VALKOSKY: Yeah, that --
23 that could be docketed, certainly.

24 MS. CORD: Okay.

25 HEARING OFFICER VALKOSKY: Yeah.

1 MS. CORD: Do I have -- I have to make
2 the prescribed 26 copies of the 500 page --

3 HEARING OFFICER VALKOSKY: It's 500
4 pages. I -- I --

5 MS. CORD: Can I have some kind of --

6 HEARING OFFICER VALKOSKY: I would be
7 willing -- I would be willing, if you could just
8 notify -- yeah, summarize it, say what it is,
9 notify the other parties that it's been docketed,
10 and docket the one copy.

11 MS. CORD: For the sake of the trees of
12 the planet, I appreciate that. Thank you.

13 HEARING OFFICER VALKOSKY: Yeah. Trees
14 have been taking a beating in this case.

15 Okay. We really have to finish up with
16 the last -- sorry.

17 Okay. We have to proceed quickly, but
18 we've gotten a reprieve.

19 MR. RATLIFF: Mr. Valkosky, if I could
20 make a suggestion, just to see what other people
21 think about it. But I think, with the exception
22 of Visual Resources, perhaps we might hold off and
23 save those for a later Prehearing Conference, in
24 any case. Those -- presumably, those topics are
25 going to be heard at some future date, and we're

1 going to have to have a Prehearing Conference on
2 them anyway.

3 So I don't know if it's necessary that
4 we decide tonight the last three topics, or four
5 topics, if you count Public Health, in terms of
6 scheduling witnesses and times. That might make
7 it quicker getting out of here.

8 HEARING OFFICER VALKOSKY: Well, that'll
9 certainly make it quicker getting out of here.
10 What it will do, also, is extend the -- the time
11 required for hearings.

12 MR. RATLIFF: Will you not have another
13 Prehearing Conference, then, with regard to those
14 topics? This is it, this is --

15 HEARING OFFICER VALKOSKY: If -- if we
16 can get through them today, yes.

17 MR. RATLIFF: Okay.

18 HEARING OFFICER VALKOSKY: This would be
19 it. You know, I --

20 MR. BEERS: Four hours here --

21 HEARING OFFICER VALKOSKY: Mr. Beers,
22 you --

23 MR. BEERS: Roger Beers. I feel like
24 it's unfortunate that we've had a four hour
25 conference here, and we've spent four hours of

1 that on the issues that are either not
2 controverted, supposedly, or are seemingly of
3 lesser importance. I think there are some
4 important questions to hash out with respect to
5 these remaining issues that would make for a more
6 efficient hearing when we ultimately get to a
7 hearing on them.

8 It looks like they're not really
9 scheduled, even under the grouping here, until
10 probably early February. It would seem to me it
11 would be possible to have another conference that
12 would deal just with these particular issues here.

13 MS. GRUENEICH: If I --

14 (Inaudible asides.)

15 HEARING OFFICER VALKOSKY: Okay. What
16 would be the suggested timeframe for a second
17 Prehearing Conference on these four issues?

18 Mr. Ratliff.

19 MR. RATLIFF: I would propose scheduling
20 it at the end of the second round of hearings.
21 Make that the final item. And that way we don't
22 have to drive to San Jose for a separate
23 conference, and we can do the scheduling for the
24 next round of hearings at that time. We'll be a
25 little bit closer to --

1 PRESIDING MEMBER LAURIE: So we would
2 schedule that we would have the Prehearing
3 Conference in concert with our Evidentiary
4 Hearing.

5 MR. RATLIFF: Yes.

6 PRESIDING MEMBER LAURIE: The first
7 Evidentiary Hearing?

8 HEARING OFFICER VALKOSKY: No, the
9 second round of Evidentiary Hearings, I believe
10 Mr. Ratliff said.

11 CHAIRMAN KEESE: Mr. Chairman, what --
12 what it looks like to me that we've done, if -- if
13 we stayed according to the schedule as we've heard
14 it proposed, that we -- in Group I we have two
15 days of hearings on essentially the least
16 controversial issues. We have five -- a minimum
17 of five days on the Group II, and if I look at the
18 remaining four items, just to the original
19 schedule that I see in front of me, indicates at
20 least a day for each of those four.

21 If -- if -- I'm not going to ask my
22 question again. But if our goal is to finish by
23 the end of February, it looks like we may have to
24 spend a week or two here in a row. If we -- I
25 don't want to finish this, either. But -- but, if

1 we're going to try to space this out over this
2 period, I think we're going to have to have a feel
3 for what we're talking about here. If this -- if
4 this is eight days on this page, we've got know
5 pretty quick.

6 PRESIDING MEMBER LAURIE: Chairman
7 Keese, just let me note that you're probably --
8 well, you're aware of my reputation for demanding
9 focus, and -- and I do.

10 I haven't heard anything here today that
11 suggests anything -- any questioning that goes
12 beyond what's relevant. We'll have to wait and
13 see what happens when the questions are
14 forthcoming, and, if necessary, we'll draw
15 parameters. But listening to the amount of days
16 being requested, given our procedure, the days
17 seem real.

18 Now, your point is well taken. I
19 believe I am as committed as you are to completing
20 this by the end of February, and the further we
21 push it back, the more crowded it becomes. So you
22 will certainly have my commitment to making sure
23 that my calendar is compatible with yours, and
24 seeking to get this done by the end of February.
25 I think we have a legal and moral commitment to do

1 that.

2 That, to me, was a little bit different
3 than cutting out ten days because that would've
4 meant a commitment from these folks that I -- I
5 feel we couldn't ask. But it may end up being
6 something very close to that, and I acknowledge
7 that.

8 But, again, I -- given the comments that
9 have been made this evening, I think the numbers
10 are real. If anything, they're conservative,
11 because we know --

12 CHAIRMAN KEESE: That's my feeling, too.

13 PRESIDING MEMBER LAURIE: -- it takes --

14 CHAIRMAN KEESE: That's my feeling, too.

15 (Inaudible asides.)

16 HEARING OFFICER VALKOSKY: Okay. We've
17 heard the suggestion for the second Prehearing
18 Conference following the second set of hearings,
19 which -- and, again, I'm approximating that would
20 likely be late January. That's the best I can --
21 the best I can approximate. Does that comport
22 with Staff's schedules?

23 What -- what we're talking about is
24 essentially my -- my interpretation of Mr.
25 Ratliff's proposal, that we would not discuss

1 these four items today, but, rather, go through
2 with the hearings on the first two sets of topics,
3 and then reconvene a second Prehearing Conference
4 to discuss the remaining four topics.
5 Approximately, that would happen about the end of
6 January.

7 MS. WILLIS: The one concern I would
8 have is just to make sure there would be plenty of
9 time for the other parties to file testimony
10 before the hearings, the third round of hearings
11 starts. So that would give us enough time.

12 MR. RATLIFF: And it needn't -- I mean,
13 the suggestion needn't be that the Prehearing
14 Conference be on the last day of the second set of
15 hearings, whenever that be. It may need to be
16 earlier, in fact, if we -- if we want to give more
17 time for people to prepare.

18 But I just think right now may be -- it
19 may be premature to try -- we can't really decide
20 too much about these issues. They're -- they're
21 difficult issues, and there's going to be
22 testimony and rebuttal testimony, undoubtedly.
23 And there may be -- I don't know what -- what --

24 HEARING OFFICER VALKOSKY: Is there
25 additional testimony that Staff would be filing?

1 MR. RATLIFF: We have no plans currently
2 to file testimony, but I'm sure we'll file
3 rebuttal testimony to that that is filed by other
4 parties, because these issues are --

5 HEARING OFFICER VALKOSKY: Is --

6 MR. RATLIFF: -- are going to be
7 contested, and our testimony's been out there for
8 -- since October.

9 HEARING OFFICER VALKOSKY: Is there
10 additional testimony that Applicant will be filing
11 on these issues?

12 MR. ELLISON: One second. Excuse me.
13 Chris Ellison. I'm sure we're -- yeah, we're in
14 the same position as the Staff. I'm sure we'll be
15 filing rebuttal testimony, as well, after we see
16 what the other parties file. The extent of that,
17 you know, I don't know until we see what the other
18 parties file.

19 HEARING OFFICER VALKOSKY: Okay.

20 MR. ELLISON: I do think that I share
21 Ms. Willis' concern about if we wait to hold a --
22 to have a Prehearing Conference on these issues
23 into January, and hope to be done by the end of
24 February, that's not much time to allow for not
25 only the hearings, but the filing of testimony and

1 rebuttal testimony.

2 HEARING OFFICER VALKOSKY: I -- I agree
3 with that concern.

4 MR. ELLISON: So I -- on the other hand,
5 I'm interested in hearing the suggestions of Mr.
6 Beers and others about ways that we can make the
7 hearings more efficient.

8 And let me say, by the way, as a
9 footnote, that I appreciate the efforts that the
10 Intervenors have expressed in consolidating
11 testimony and cross, and that sort of thing. And
12 I want to compliment them on that.

13 PRESIDING MEMBER LAURIE: Well --

14 MR. ELLISON: So perhaps we can hold the
15 Prehearing Conference on these issues in the first
16 set of hearings. Maybe that makes --

17 PRESIDING MEMBER LAURIE: Mr. Ellison,
18 let me ask Mr. Valkosky. Stan, is there any
19 reason why the Committee has to commit to a
20 specific date today? Other than note that we
21 think it's in the parties' best interest to
22 continue these additional four matters to a --

23 HEARING OFFICER VALKOSKY: No, we do not
24 have to decide a specific date today. The purpose
25 of this is for the Committee to -- to get relevant

1 information to assist it in scheduling future
2 events. That's the sole purpose.

3 Okay. Mr. Beers.

4 MR. BEERS: Can I just fill out the
5 picture --

6 HEARING OFFICER VALKOSKY: Certainly.

7 MR. BEERS: -- of what the status of
8 some of these items is. There have been some
9 recent tests that have been submitted. We've
10 submitted some additional data requests today,
11 within the deadline that had been imposed by the
12 Committee. We've also filed an appeal of the
13 Committee's earlier discovery ruling, and I didn't
14 want to sit across from you all evening with the
15 stack up here without letting you know that we
16 brought copies so that people can have those.

17 But those are the -- those are all
18 things that we hope can be resolved pretty
19 quickly. And the sooner they're resolved, and the
20 sooner we get that kind of information and have
21 some further discussions with Staff, I think we
22 can deal more efficiently with some of the issues
23 in these remaining topics that we've got here.
24 And my joinder with Mr. Ratliff's suggestion was
25 for the purpose of trying to make sure that we can

1 do that more efficiently, rather than that it
2 would take longer to get there.

3 HEARING OFFICER VALKOSKY: Okay. Well,
4 I think those are constructive -- constructive
5 suggestions.

6 While we're on the topics, I assume that
7 any further discussions that will occur will deal
8 with the items raised in the Prehearing Conference
9 Statements, and specifically I notice that there
10 was discussion about the plume abatement plan for
11 visual impacts, certainly the source test data and
12 health risk assessment that Mr. Beers referred to.

13 I would also like a little clarification
14 on a couple of things that I found interesting.

15 Mr. Ellison or Harris, is CVRP correct
16 that the District FDOC doesn't consider the
17 cooling tower emissions and that a separate DOC
18 will be required? I found that interesting.

19 MR. HARRIS: No. They're incorrect.
20 Let me explain that.

21 The Bay Area District, until June of
22 this year, in its regulations didn't have the
23 cooling tower accounted for in their regulations
24 and, as you may recall, in the Delta case, that
25 was the case.

1 Since that time, again in June, the
2 cooling tower language has been added to the local
3 rules. And so this is an issue that is literally
4 a ministerial issue. We'll be filing an
5 application and a form. And let me emphasize that
6 this new rule applies not just to Calpine, and not
7 just to power plant projects; it applies to every
8 cooling tower within the Bay Area District. So
9 it's specific to the district, and not this
10 particular project. And, again, in the FDOC --

11 MR. ABREU: Yeah, and the FDOC does have
12 all the analysis and conditions, and stuff, for
13 the cooling tower already in it.

14 HEARING OFFICER VALKOSKY: Okay.

15 Mr. Beers.

16 MR. BEERS: Could I -- Roger Beers.

17 Could I only say that I don't know of anything in
18 the area of Air Quality that could be described
19 as, quote, ministerial. The one thing I do know
20 is that the FDOC doesn't deal expressly with
21 cooling towers.

22 MR. WILLIAMS: It --

23 HEARING OFFICER VALKOSKY: Okay. Just
24 -- not yet, Mr. Williams.

25 I -- I just, and again, I'm not going to

1 exhaust this. I just bring it up because I found
2 that very interesting, let me put it that way.

3 Secondly, and just in general, how about
4 the analysis of start-up emissions. I know the
5 CVRP indicated that that had not been reviewed.

6 MR. ABREU: I read that with interest,
7 as well. We -- we never proposed to test for
8 start-up emissions because it's technically not
9 possible to do. In fact, we -- we proposed to
10 test at full load; we've provided that. We've
11 proposed to test at part load; we've provided
12 that. So we have provided everything that we
13 agreed to promise. And there was no discussion
14 ever of start-up emissions.

15 HEARING OFFICER VALKOSKY: All right.
16 Well, without wishing to belabor this, I -- I
17 sense it's the desire of the Committee that we
18 take the suggestion of Mr. Beers, and Mr. Ratliff,
19 and continue discussion of these four topics to a
20 subsequent. Is that correct?

21 PRESIDING MEMBER LAURIE: Mr. Valkosky,
22 the Committee hasn't had an opportunity to discuss
23 it. I haven't discussed it with Chairman Keese.
24 But we'll certainly take that under consideration.
25 And we'll --

1 (Inaudible asides.)

2 MR. RICHINS: Yeah. Just a -- a
3 question, or suggestion. Can the parties be asked
4 to file something in writing with specific
5 directions from the Committee on what it is that
6 they would like to see in that filing, and that
7 way not really need to have a Prehearing
8 Conference, a second one. Identify the witnesses,
9 and identify the amount of time for cross, as they
10 were instructed initially.

11 HEARING OFFICER VALKOSKY: Well, that
12 certainly is a suggestion, and I just would like
13 to observe that if everybody had followed the
14 initial instructions, a lot of tonight wouldn't
15 have been necessary. I mean, and I guess that's
16 another question, because I tried to be very
17 specific in that notice. I didn't see that there
18 was much ambiguity in it, or anything else. And I
19 really would like to admonish the parties to
20 follow those instructions.

21 There is a purpose behind it, and
22 whether or not you agree with it, there is a
23 purpose.

24 Okay.

25 MR. WILLIAMS: Just a point of

1 clarification -- Robert Williams -- that I believe
2 would help myself and all the other parties.

3 One of my contentions is that the best
4 available control technology issue has not been
5 properly dealt with by the Bay Area Air Quality
6 Management District. And it seems to me that we
7 need to bring in people from the Air Quality
8 Management District --

9 HEARING OFFICER VALKOSKY: Staff -- if
10 you will read Staff's Prehearing Conference
11 Statements, I believe there are two witnesses from
12 the Bay Area Air Quality Management District which
13 are identified as going to be present to testify
14 in Air Quality. Is that not correct, Ms. Richins?

15 MS. WILLIS: I'll answer that.

16 HEARING OFFICER VALKOSKY: Ms. Willis.

17 MS. WILLIS: Yes, we've invited Dennis
18 Jang and Steven Hill.

19 MR. WILLIAMS: Well, specifically, is it
20 okay to address issues related to BACT in the --
21 in the Air Quality and Public Health impacts area?

22 HEARING OFFICER VALKOSKY: BACT is an
23 Air Quality issue. Should you wish to examine the
24 representatives from the district as to the
25 validity of their determination, I would believe

1 that's relevant.

2 MR. WILLIAMS: Thank you, sir. I -- it
3 seems self evident to me, too, but I wanted to
4 confirm that. Thank you.

5 MS. GRUENEICH: Dian Grueneich, for
6 CVRP. I just wanted to clarify, maybe I missed
7 it. The first item on Group III is Visual
8 Resources, which we didn't talk about. Right?

9 HEARING OFFICER VALKOSKY: Correct.

10 MS. GRUENEICH: So that's -- because I
11 know that at one point Mr. Ratliff, you had talked
12 about items below that. But I'm assuming that
13 that one's just moving over whenever we do talk
14 about Group III.

15 HEARING OFFICER VALKOSKY: Right.
16 Everything in Group III is -- is moving over to be
17 a Group III day, and nothing but Group III. Or --
18 let me back up.

19 I'll know by tomorrow whether or not
20 that's happening.

21 MR. AJLOUNY: Isa. I'd like -- the
22 Commissioners would consider the public
23 participation as much, or more so, than this
24 supposed deadline, legal deadline of the end of
25 February. That's all I'd like to say. Thank you

1 very much.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Are there any other comments from the
4 parties? I've got three cards from members of the
5 public.

6 Mr. Ellison, sure.

7 MR. ELLISON: Chris Ellison. I would
8 just like to ask whether the Committee and the
9 parties, in the interest of saving trees and fuel
10 and taxpayer dollars, might be willing to discuss
11 these issues that we'd be talking about in this --
12 this Issue III Prehearing Conference, perhaps by
13 conference call, if we were to send out a notice
14 with the dial-in number, or something of that
15 nature.

16 I leave that for the Committee's
17 discretion to consider, but I know that -- that
18 from the Applicant's perspective, that's something
19 that we would be willing to do, and if it's more
20 convenient for other parties, that's something to
21 think about.

22 HEARING OFFICER VALKOSKY: Okay. Thank
23 you for the suggestion, Mr. Ellison.

24 Anything else from the parties on this?

25 PUBLIC ADVISER MENDONCA: Mr. Valkosky,

1 Roberta Mendonca, the Public Adviser.

2 We have one member of the public who
3 left earlier, leaving me his blue card. It's very
4 simple and direct. I support this power plant.
5 His name is William Schultz, and he lives on -- I
6 have Gill Court.

7 And I will give that to the recorder for
8 his name to go into the record.

9 HEARING OFFICER VALKOSKY: Thank you,
10 Ms. Mendonca.

11 Okay. Members of the public -- there
12 used to be a microphone. Mr. Richins, could you
13 put a microphone up there.

14 Thank you, Paul.

15 Philip Russell. No Philip Russell.

16 Okay.

17 William Garbett. If you could identify
18 yourself for the record, and spell your last name
19 for the reporter.

20 MR. GARBETT: Yes. William Garbett,
21 representing the public. I am an Intervenor.
22 Unfortunately, I was not recognized during the
23 time that I did sit at the table here.

24 The public did not provide a filing,
25 the preconference statement that you asked for,

1 because we do not believe that you're ready for a
2 preconference, because of certain issues that are
3 outstanding that have never been supplied.

4 With that, we do have evidence and
5 testimony that we would like to provide when we do
6 feel this is ready, regarding Noise, Public
7 Health, Safety, Water Resources, Alternatives,
8 Reliability, and Land Use. And so I request some
9 time be allowed.

10 If you trail us, we will probably find
11 out that we will be adequately supplied by the
12 other parties' testimony, and won't have to be
13 redundant. However, there are some issues that we
14 do take issue with. And if this hearing is --
15 this Prehearing Conference is continued, the
16 Prehearing Conference should take place before any
17 testimony is given.

18 Thank you.

19 HEARING OFFICER VALKOSKY: Ms. Lucas.

20 MS. LUCAS: Libby Lucas. I think
21 probably my concerns have already been addressed.
22 My concerns were with the fact that this -- so
23 much of this parcel still is within the county
24 jurisdiction, and has the county guidelines with
25 150 foot riparian corridor setback. And I think

1 it's very important that the nature of the Santa
2 Clara County General Plan and riparian corridor
3 processes be -- be administered in the spirit in
4 which they were designed.

5 And I certainly hope that that
6 alternative is kept in all the discussions with
7 the biological review that we haven't yet
8 received, and that is -- is a very important one.
9 And I'm very sorry that we haven't heard from U.S.
10 Fish and Wildlife. So I -- I think that it's a
11 big consideration with the fisheries and the
12 birds.

13 Thank you so much.

14 HEARING OFFICER VALKOSKY: Thank you,
15 ma'am.

16 Is there anything else from anyone who
17 hasn't spoken tonight?

18 Okay. Last chance.

19 MR. AJLOUNY: I just have -- Isa, and I
20 have one basic question. And considering that
21 this -- part of this land is not going to be
22 annexed into San Jose, or has been denied through
23 the council, I just have the question, is does the
24 Commissioners or the CEC have the overriding
25 authority to force annexation? I know about the

1 other things, but just annexation itself. I just
2 really --

3 HEARING OFFICER VALKOSKY: I think
4 that's a very interesting question. I really do.

5 MR. AJLOUNY: I do, too. I've been --

6 HEARING OFFICER VALKOSKY: I'm not being
7 facetious.

8 MR. AJLOUNY: I've been wondering.

9 HEARING OFFICER VALKOSKY: I -- I would
10 hope that's kind of a thing that some of the
11 witnesses will address in -- in the Land Use
12 topic. In fact --

13 MR. AJLOUNY: Well, I thought the
14 Commissioners pretty much knew that kind of stuff.
15 I mean, I -- I really did. I just thought that's
16 the law --

17 HEARING OFFICER VALKOSKY: A few things
18 even Commissioners don't know.

19 PRESIDING MEMBER LAURIE: Well, wait a
20 minute. You didn't ask me.

21 (Laughter.)

22 HEARING OFFICER VALKOSKY: That the
23 other four Commissioners don't know.

24 (Laughter.)

25 PRESIDING MEMBER LAURIE: I think the --

1 the issue will arise during the Land Use
2 investigation. It's a proper question.

3 MR. AJLOUNY: So -- so the answer is not
4 known at this time. Maybe --

5 PRESIDING MEMBER LAURIE: No. No, I
6 didn't -- what I'm suggesting is it's a proper
7 question for you to raise with the witnesses, if
8 you deem it relevant.

9 MR. AJLOUNY: Okay. Would it be proper
10 for me to ask a motion for that question to the
11 Commissioners before that?

12 PRESIDING MEMBER LAURIE: No. There --
13 there's going to -- Stan, don't let me get carried
14 away here. There's going to be Land Use
15 witnesses. If -- if you want to ask them, ask
16 them. Maybe they know, maybe they don't know.

17 CHAIRMAN KEESE: We're the judges. We're
18 not the attorneys.

19 MR. AJLOUNY: Okay. I --

20 CHAIRMAN KEESE: You give us evidence,
21 and we make decisions. You try to impress
22 Commissioner Laurie and I with the validity of
23 your opinion, and if you do --

24 MR. AJLOUNY: Okay. So I -- so what
25 you're saying is to try to prove to you you don't

1 have the authority, and then if you believe us,
2 then you'll say you can't do it, or something. I
3 mean, is that --

4 CHAIRMAN KEESE: You're going to lay out
5 evidence, and we're going to hear it.

6 MR. AJLOUNY: Okay. I guess I didn't
7 realize. I thought it's some law that you know,
8 and you -- because we've been hearing from the
9 Applicant and everyone else that you guys have the
10 override authority to override the City of San
11 Jose, and it's assumed. So I just wanted to add
12 that piece about annexation. Does that make it
13 not legal or not --

14 PRESIDING MEMBER LAURIE: I think
15 there's a difference between overriding a local
16 decision and forcing a local decision. There's a
17 difference between them.

18 MR. AJLOUNY: Okay.

19 HEARING OFFICER VALKOSKY: And frankly,
20 I think, you know, and the last word I really want
21 on that tonight, but I think that's one of the
22 things the witnesses have to -- have to address in
23 their testimony. You certainly can ask them.

24 But it's -- it's actually a very
25 interesting situation. This is all hypothetical.

1 But the Committee overrode the law non-
2 conformance, what does that really mean, if the
3 city doesn't also annex the land. You know,
4 that's -- that's a very good question.

5 MR. AJLOUNY: I guess that's why I'm
6 asking it, because I'm really -- in the sake of
7 paper, time, money, and I figured if we could
8 answer it tonight, then maybe we could all go home
9 and have a good Christmas present.

10 HEARING OFFICER VALKOSKY: We can't, but
11 hopefully we can have a good Christmas anyway.
12 Okay.

13 Is there anything else from anyone?

14 Thank you for your attendance and
15 participation. I'd like to thank the school for
16 putting up with us after hours, too. Thank you
17 very much.

18 (Thereupon the Prehearing Conference
19 was concluded at 10:30 p.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Prehearing Conference; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said Prehearing Conference, nor in any way interested in the outcome of said Prehearing Conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of December, 2000.

VALORIE PHILLIPS

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